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Making public inquiries transformative

A human rights analysis of the Grenfell Tower Inquiry

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Abstract

Public inquiries in the United Kingdom are fact-finding mechanisms which fit within the truth pillar of transitional justice. Despite their many strengths, their legalistic nature means that (i) they tend to have carefully bounded, technocratic terms of reference which do not often extend to economic, social and cultural issues, and (ii) they offer limited opportunities for victims and survivors to participate. These same concerns, identified in the broader field of transitional justice, have led to the emerging theory of transformative justice. This approach focuses on the lived experiences of victims and survivors, encouraging their participation and addressing the structural violence they face. This thesis posits that adopting a transformative approach, in appropriate cases, would improve the outcomes of public inquiries, by making their analysis and recommendations better informed and more comprehensive, and enabling victims and survivors to contribute fully to their work.

Using the ongoing Grenfell Tower Inquiry as a case study, the thesis applies a socio-legal approach to assess a public inquiry for the first time against the analytical framework provided by transformative justice. It finds that, due to the exclusion of economic, social and cultural issues from its mandate, and the limitations of its engagement with victims and survivors, the Inquiry's work cannot be described as transformative. This has a number of consequences, including the maintenance of forms of structural violence which will continue to affect the lives of victims and survivors, and which could contribute towards future disasters.

Acknowledgements

With thanks to Dr. Brianne McGonigle Leyh for her supervision. In writing this thesis, my thoughts have been with Logan Gomes, who was stillborn on the night of the fire after his mother escaped from Grenfell Tower. May we find it in ourselves to act on the sickening unfairness of his life being stolen from him before it had even begun.

Table of abbreviations

| | |
|--------|---|
| CEDAW | Convention on the Elimination of all Forms of Discrimination Against Women (1979) |
| CERD | Convention on the Elimination of All Forms of Racial Discrimination (1969) |
| CP | Civil and political |
| CRPD | Convention on the Rights of Persons with Disabilities (2008) |
| ECHR | European Convention on Human Rights (1953) |
| ECtHR | European Court of Human Rights |
| EHCR | Equality and Human Rights Commission (the UK's national Human Rights Institution) |
| ESC | Economic, social and cultural |
| ICCPR | International Covenant on Civil and Political Rights (1966) |
| ICESCR | International Covenant on Economic, Social and Cultural Rights (1966) |
| KCTMO | Kensington and Chelsea Tenant Management Association |
| MP | Member of Parliament |
| RBKC | Royal Borough of Kensington and Chelsea |
| SATRC | South African Truth and Reconciliation Commission |
| TMO | Tenant Management Association |

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Introduction

In the early hours of 14 June 2017, an electrical fault in a fridge-freezer in Grenfell Tower,¹ a residential building containing 129 apartments in West London,² caused a kitchen fire which quickly spread to engulf the 24-story building³. Seventy-two people died, and many more injured or displaced.⁴ It was the worst loss of life in a residential fire in the United Kingdom in a century.⁵

Perhaps the sheer horror can only begin to be understood from the accounts of victims and survivors, like that of one man who escaped by running down the single stairway from the 15th floor:

*I could feel myself tripping over in the dark. I was tripping over bodies. On one of the floors I tripped badly and fell, as I looked up I saw the face of a dead man.*⁶

There have been a number of responses to the fire from the state, including coroner's inquests into the deaths and a substantial police investigation. However, the most prominent response has been the establishment of the Grenfell Tower Inquiry, which serves as the case study for this thesis. The Inquiry is assessed against the theoretical framework provided by the emerging field of transformative justice.

The field of transitional justice focuses on societies emerging from events of great social trauma, such as conflict and widespread human rights abuses. However, it can also provide a useful analytical lens to view events in non-transitional societies such as the UK, which have nonetheless experienced traumatic events like the fire at Grenfell Tower. Such events can demand similar processes of examination, accountability, reforms, reparations and memorialisation. Transformative justice is a more recent

¹ Grenfell Tower Inquiry, *Phase 1 report overview*, October 2019, Chapter 2, p2. Available at: <https://www.grenfelltowerinquiry.org.uk/phase-1-report> (Accessed: 11 August 2020)

² House of Commons (2020) Library, *Grenfell Tower Fire: Background*, CBP 8305. Available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-8305/> (Accessed: 11 August 2020), p3

³ Tuitt, Patricia (2019) *Law, Justice and the Public Inquiry into the Grenfell Tower Fire*, in 'After Grenfell: Violence, Resistance and Response', Bulley, Dan, Edkins, Jenny & El-Enany, Nadine (Eds.), Pluto Press, p119

⁴ Bright, Susan & Maxwell Douglas (2019), Human Rights and State Accountability for Fire Safety in Blocks of Flats, *Queen Mary Human Rights Review*, 5(2), p2

⁵ Ibid, p1

⁶ BBC, *Messages from the tower*, 12 July 2017. Available at: https://www.bbc.co.uk/news/resources/idt-sh/grenfell_voices (Accessed: 8 August 2020)

development from transitional justice, which espouses an approach that is more empirically driven rather than reliant on pre-conceived models, responding and adapting to all aspects of the lived experiences of victims, and allowing for their effective participation and, consequently, their empowerment.⁷ Most importantly, it aims not just to remedy the wrongs they have suffered, but also to transform their lives in ways that will reduce their vulnerability to future abuses.

Public inquiries are pseudo-formal, hierarchical and legalistic mechanisms, which tend to have technocratic mandates focused on the immediate circumstances of the events under examination. This means that, in line with more traditional transitional justice mechanisms, they may address the most urgent issues but leave broader underlying causes in place. In particular, public inquiries have tended to shy away from addressing violations of economic, social and cultural rights, which maintains the structural violence that can play an important role in the events. By not addressing these issues, an inquiry's understanding may not be comprehensive, which will impact on the effectiveness of its outcomes. Inquiries also tend to offer victims and survivors carefully prescribed opportunities to contribute, usually through a legal representative, which can leave them frustrated and unable, in their minds, to contribute fully to its work. In theory, making inquiries more transformative could improve their outcomes by ensuring that they are fully informed by the experiences of victims and survivors, enabling inquiries to effect greater change in their lives by reducing the structural disadvantages they face and their exposure to future abuses - by not simply preventing recurrence but by "addressing the injustices of the past through measures that will procure an equitable future."⁸

Transformative justice theories are particularly well placed to examine what appear anecdotally to be emerging trends in demands of public inquiries: that they engage more fully with victims and survivors, and that they go beyond determining the most immediate facts to examine a broader range of structural economic, social and cultural factors, including in particular the experiences of disadvantaged communities. This trend is illustrated by a number of recent headlines in the UK press calling for a

⁷ Robins, Simon (2019) *Toward Transformative Justice*, in From Transitional to Transformative Justice, Gready, Paul & Robins, Simon (eds.) Cambridge University Press, p297

⁸ Waldorf, Lars (2012) Anticipating the past: Transitional justice and socio-economic wrongs, *Social & Legal Studies*, 21(2), p172

proposed public inquiry into the state's response to the coronavirus pandemic to address the effects of discrimination against ethnic minorities and disabled people.⁹ Calls for the investigation of discrimination based on race, ethnicity, poverty and class have also been a feature of the Grenfell Tower Inquiry. I have chosen this Inquiry as a case study because, on its surface, the fire appears to reveal, in appallingly visual form, the devastating effects of neglect on already disadvantaged communities. As a member of a local campaign group has said:

*The Atrocity that happened at Grenfell Tower shows us every thing that is wrong with our society. Inequality, Profit and Greed before people, discrimination, deregulation, the decline of public services, privatisation all have a hand in in what occurred.*¹⁰

The thesis' main research question is: to what extent can the Grenfell Tower Inquiry be said to be transformative according to transformative justice theory. In order to answer this, it considers a number of sub-questions, including: what is transformative justice and why has it emerged? What are public inquiries and why are they an appropriate subject for transformative justice analysis? To what extent is the ongoing Grenfell Tower Inquiry examining structural economic, social and cultural issues relevant to the fire, and how is it encouraging the participation of victims and survivors? And what lessons can be learnt from this analysis for the future of this Inquiry and those following it?

The approach taken by this thesis is innovative because it does not appear that public inquiries have previously been assessed according to the transformative justice framework. Moreover, public inquiries are a relatively understudied subject: one source drawn upon here for its authoritative discussion of their workings was, in 2011, "the first book on public inquiries ever to be published".¹¹ This thesis aims

⁹ The Guardian, *Calls mount for public inquiry into UK BAME Covid-19 death rate*, 2 June 2020. Available at: <https://www.theguardian.com/world/2020/jun/02/calls-mount-for-public-inquiry-into-uk-bame-covid-19-death-rate> (Accessed: 8 August 2020); The Guardian, *Coronavirus inquiry 'could transform racial inequality in UK'*, 1 July 2020. <https://www.theguardian.com/world/2020/jul/01/coronavirus-inquiry-could-transform-racial-inequality-in-uk> (Accessed: 8 August 2020); BBC, *Coronavirus: Why disabled people are calling for a Covid-19 inquiry*, 4 July 2020. Available at: <https://www.bbc.com/news/uk-53221435> (Accessed: 8 August 2020)

¹⁰ Justice4Grenfell, *The shadow of Grenfell: Austerity, gentrification and the housing crisis*. Available at: <https://justice4grenfell.org/1292/> (Accessed: 8 August 2020)

¹¹ Beer, Jason (2011) *Public Inquiries*, Oxford University Press, pvii

therefore to make a contribution both by providing a novel case study for the application of transformative justice theory, and by adding to our understanding of the practice of public inquiries.

It applies a socio-legal approach, using secondary research from the academic literature on transformative justice and public inquiries, supplemented by primary research into: international and domestic legislation, case law and guidance; documents produced by the Grenfell Tower Inquiry and submissions to it from interest parties; publications from government, parliament, charities and think tanks; and the considerable press coverage of the Inquiry. Particular attention has been paid to submissions and public statements from victims and survivors, and from organisations supporting their interests, which are of particular importance to the aims of transformative justice.

The coronavirus pandemic has limited the scope and methodology of this thesis, which had originally been intended as a more wide-ranging study of the growing demands for public inquiries to be more transformative, and may otherwise have involved attendance at commemorative events, and perhaps interviews. However, the high level of public interest in the inquiry has meant that the views and requests of victims and survivors have been well documented, and this more focused analysis of one case study provides enough material for some broader lessons to be drawn about the practice of public inquiries. I have also left out of this analysis discussion of some relevant domestic legislation, such as the Equality Act 2010 and the important public sector equality duty that it created, because of time constraints imposed by the pandemic and because the focus of the programme for which this thesis was produced is on international human rights law. Although the Grenfell Tower Inquiry uses the term “bereaved, survivors and residents”, I have used “victims and survivors” as a more general purpose term for this discussion of public inquiries, although I intend it to refer to the same categories of people.

The thesis starts by outlining the field of transitional justice, including the theories of justice that it has drawn upon and some of the criticisms they have attracted, before discussing the emergence from these criticisms of transformative justice. It then discusses truth-seeking, focusing on one of the UK’s most prominent truth-seeking mechanisms, public inquiries, examining both their purposes and some of the difficulties they face. This foundation on transformative justice and public inquiries is then used to inform the analysis of the Grenfell Tower Inquiry, focusing on the development of its terms of reference

and the participation of victims and survivors. The thesis ends with some broader conclusions, drawing on all three sections to assess the transformative nature of the Grenfell Tower Inquiry, before making some comments about the future of public inquiries.

1. Transitional to transformational justice

Transitional justice as a field of theory and practice started in the 1980s and has since become cemented as a default set of tools for societies emerging from periods of mass trauma, authoritarian rule, conflict and widespread human rights abuses.¹² Although there is no universally agreed definition, in 2004 Kofi Annan, then the Secretary-General of the United Nations, defined it as:

*...the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.*¹³

Academics and practitioners have identified four main 'pillars' of transitional justice: truth seeking (truth commissions, commission of enquiry and historical commissions); justice/accountability (criminal trials, vetting and lustration); reparations (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition); and, as a separate pillar, guarantees of non-repetition (legal, institutional and security sector reforms, educational initiatives and memorialisation). Although the field was initially focused on justice/accountability and guarantees of non-repetition, it has since expanded to include quasi-judicial and non-judicial mechanisms including truth commissions, systems of vetting and lustration, reparations and guarantees of non-repetition.¹⁴ Although it emerged as a set of tools for societies emerging from periods of conflict, violence and authoritarianism who wished to move towards peace and democracy, its processes can also be applied 'non-transitional', democratic states, who have nevertheless suffered events of great social trauma.

Despite the success of the field over the last four decades, one line of criticism that has emerged is that, in remedying the harm suffered by victims, it has simply served to return them to situations of pre-

¹² Sharp, Dustin N. (2019) What Would Satisfy Us? Taking Stock of Critical Approaches to Transitional Justice, *International Journal of Transitional Justice*, 2019, 13, p576; Evans, Matthew & Wilkins, David (2019) Transformative Justice, Reparations and Transatlantic Slavery, *Social & Legal Studies* 2019, Vol. 28(2), p138

¹³ Evans, Matthew (2016) Structural Violence, Socioeconomic Rights, and Transformative Justice, *Journal of Human Rights*, 15:1, p4

¹⁴ Gready, Paul & Robins, Simon (2014), From Transitional to Transformative Justice: A New Agenda for Practice, *The International Journal of Transitional Justice*, Vol. 8, 2014, pp3201839-340

existing vulnerability to ongoing and future abuses. As a result, there has been an influential move towards the idea of ‘transformative justice’. This chapter outlines the development of transitional justice from its early legalistic focus on remedying wrong done to victims, to the emergence of the new transformative approach.

1.1 Transitional justice

1.1.1 Theories of transitional justice

From its beginnings in the 1980s until the mid-2000s, transitional justice can be seen to have operated under three main theories of justice: retributive, restorative and reparative.

1.1.1.1 Retributive justice

Retributive justice is focused on the actions of perpetrators, focusing on trials and tribunals to achieve accountability and retribution for those found to have committed violations.¹⁵ This enables a society to demonstrate its condemnation of perpetrators’ actions, inflicting some form of commensurate suffering on them, and providing a discouraging example to others. It had long been the favoured approach to achieving justice, with the International Military Tribunal at Nuremberg, set up by the Allied powers after the Second World War to prosecute the leaders of Nazi Germany, serving as a particularly prominent example.

However, this approach has also been subject to a number of criticisms: its overwhelming focus on the violations of perpetrators means that the role of victims and the harm they have suffered tends not to be centred (victims were not even mentioned in the Charter of the Nuremberg tribunal);¹⁶ although retributive justice can be effective when responding to isolated crimes, it tends to be less so in

¹⁵ Cahill-Ripley, Amanda (2014). Foregrounding socio-economic rights in transitional justice: Realising justice for violations of economic and social rights, *Netherlands Quarterly of Human Rights*, 32(2), pp186-187

¹⁶ McGonigle Leyh, Brianne (2017) The socialisation of transitional justice: expanding justice theories within the field, *Human Rights & International Legal Discourse*, 11(1), p86

addressing collective violence involving mass victimisation, including the broader economic, cultural and social (ESC) forces that can lead to it; the process of selecting cases for prosecution can be subject to political influence; and trials tend to address narrow sets of legal violations with particular attention paid to violations of civil and political (CP) rights, at the exclusion of violations of ESC rights.¹⁷

1.1.1.2 Restorative justice

Restorative justice represents a clear break from retributive justice. It comes into play after a finding (or admission) of guilt. However, rather than focusing retributively on punishing perpetrators, it centres the victim, with the principal aim of repairing the harm that they have suffered.¹⁸ This approach has been effected largely by the holding of truth commissions tasked with fact-finding, fostering healing and reconciliation.¹⁹ However, restorative justice too has limitations: it can prove insufficient to adequately address violations in the absence of prior retributive punishment, particularly when the offences are serious; and it can place implicit pressure on victims to offer forgiveness and engage in reconciliation in circumstances in which they may not feel this is appropriate²⁰ - for example, if a perpetrator's remorse appears performative and suspect (see the South African Truth and Reconciliation Commission's (SATRC) incentivisation of perpetrators' confessions using the promise of criminal immunity). This compulsion forces victims to play a fixed role, which may be in the interests of some of the mechanism's processes, but could restrict the extent to which victims are able to effectively contribute.

1.1.1.3 Reparative justice

The third theory which has had a large impact in the field of transitional justice is less clearly distinguishable from its predecessor. During the 20th Century, the long-standing tort law principle of repairing harms suffered by victims by returning them to the position they would have been in had the harm not suffered, was adopted into public international law. Originally, states served as the official

¹⁷ Ibid, pp86-87

¹⁸ Ibid, p87

¹⁹ Ibid, p88

²⁰ Ibid, p88

victims of violations, and were left to provide any reparations to their citizens as they saw fit. However, with the emergence of international humanitarian law, reparations became an individual right, and they were subsequently adopted by international human rights law²¹ and by transitional justice.²²

Beneficiaries of reparations can be both individual victims or groups of individuals who have experienced collective harm because of a shared characteristic,²³ and they can be borne by both individuals or culpable states. Reparative justice is most commonly sought using five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. These include measures which aim to restore victims to the position they would have been in had the violation not occurred (restitution), provide them with support services such as medical care and legal assistance (rehabilitation), and take steps to prevent violations reoccurring, such as legislative and institutional reforms (guarantees of non-repetition).²⁴

However, in designing a reparations programme it can be difficult to calculate the subjective harm suffered by victims, or to agree on what categories of victim should benefit.²⁵ As a result of financial constraints and a lack of political will, reparations programmes are often limited to a restricted number of violations (particularly CP crimes) and categories of victims.²⁶ Furthermore, the benefits of simply removing the effects of the harm are limited if the pre-existing position of the victim was characterised, for example, by inequality, marginalisation and poverty.

1.1.2 Criticisms of transitional justice

²¹ See UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc A/RES/60/147. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement> (Accessed: 8 August 2020)

²² Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2007), 174, cited in Balasco, Lauren Marie (2018) *Locating Transformative Justice: Prism or Schism in Transitional Justice?* *International Journal of Transitional Justice*, 2018, p369; Ibid, p369; McGonigle Leyh (n16), p89

²³ Stephan Parmentier, “Reparations”, lecture at the Global Campus of Human Rights, Venice, November 2019

²⁴ McGonigle Leyh (n16), pp89-90

²⁵ Ibid, pp90-91

²⁶ Evans (n13), pp6-7

These criticisms can be drawn together into two major strands: transitional justice prioritises CP rights over ESC rights, and thereby fails to address structural violations; and it is not sufficiently participatory for victims and survivors. This section discusses these strands in more detail because they are central to the analysis of the case study.

1.1.2.1 Neglect of ESC rights and structural violence

‘Traditional’ transitional justice approaches, particularly those applying retributive justice, have tended to focus largely or entirely on violations of CP rights such as torture, rape, murder, enforced disappearances, or other incidents of direct, personal, bodily violence.²⁷ This focus has come at the expense of the neglect of violations of ESC rights, such as racial discrimination and income inequality.²⁸ The earliest truth commissions, such as those in Argentina (1983-1984), Chile (1990-1991) and El Salvador (1992-1993), neglected to examine ESC issues at all.²⁹ Where ECSR violations have been addressed by truth commissions, they were often discussed merely as background context to the CPR violations that are focused on:³⁰ although the truth commissions in Guatemala (1997-1999), Peru (2001-2003) and Sierra Leone (2002-2004) were more willing to consider ESC concerns, with the Timor Leste (2002-2005) commission report giving an entire chapter to socio-economic issues,³¹ they still tended to restrict this discussion to the ways in which such violations have fed into the conflicts leading to CPR violations.³² Furthermore, this consideration has not appeared to influence any recommendations made,³³ with the Timor Leste commission limiting the categories of victims entitled to reparations to those who had suffered CPR violations.³⁴ Even the SATRC, which was otherwise widely hailed as a model for subsequent commissions, did not have the examination of ESC violations in its mandate.

²⁷ Sharp, Dustin N. (2012) Addressing economic violence in times of transition: Towards positive-peace paradigm for transitional justice. *Fordham International Law Journal*, 35(3), 780-814, pp792-793; Cahill-Ripley (n15), pp183, 187 & 190-191; Evans (n13), p4; McGonigle Leyh (n16), p83

²⁸ Evans (n13), p4

²⁹ Laplante, Lisa (2008) Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework, *The International Journal of Transitional Justice*, Vol. 2, p335

³⁰ Cahill-Ripley (n15), p184 & pp190-191; Sharp (n27), p782;

³¹ Arbour, Louise (2007) Economic and social justice for societies in transition, *New York University Journal of International Law and Politics*, 40(1), p14

³² Waldorf (n8), p176; Cahill-Ripley (n15), pp190-191

³³ Arbour (n31), p13; Sharp (n27), p795; McGonigle Leyh (n16), pp93-94

³⁴ Sharp (n27), p795

Why have ESC rights been neglected?

There are a number of reasons why the consideration of ESC violations has been minimal or missing entirely from transitional justice mechanisms. The bias towards CPR is symptomatic of the broader human rights field,³⁵ in which CP rights have been labelled ‘first generation’ rights, and ESC rights as a ‘second generation’ to be addressed only later.³⁶ This has been accompanied by a belief that, where CPR are realised, the realisation of ECSR will follow.³⁷ This may also stem partly from a similar ambivalence towards ESC rights within the field of criminal justice, which engages mostly with violations linked to bodily integrity and seeks criminal accountability for individual perpetrators rather than remedies for the structural causes of violations.³⁸

This bias has also been fueled by a lack of knowledge of ESC rights. It has been suggested, even by high profile human rights practitioners, that ESC rights are not ‘real’ rights but entitlements or non-binding aspirational goals to be grouped with development initiatives³⁹ (with major NGOs such as Human Rights Watch and Amnesty International noted as failing to document ESC violations⁴⁰), or that their realisation should properly depend on the availability of resources.⁴¹ The consequent neglect of ESC rights only serves to reinforce this lack of awareness.⁴²

ESC rights have been perceived as complex and difficult to define,⁴³ and the consequences of their violation, such as the displacement of victims in violation of their right to housing, have been thought to be of lesser importance than violations of their CP rights.⁴⁴ Where violations of ESC rights have been

³⁵ Ibid, p796; Waldorf (n8), p173; Evans & Wilkins (n12), p139

³⁶ Sharp (n27), p797

³⁷ Arbour (n31), p10

³⁸ See UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998.

Available at: <https://www.refworld.org/docid/3ae6b3a84.html> (Accessed: 11 August 2020), Articles 6-8; Waldorf (n8), p173; Sharp (n27), p797

³⁹ Cahill-Ripley (n15), pp187-188; Sharp (n27), pp782 & 797

⁴⁰ Ibid, p797

⁴¹ Arbour (n31), p11

⁴² Sharp (n27), p796

⁴³ Cahill-Ripley (n15), p192

⁴⁴ Ibid, 32(2), p184; Gready & Robins (n14), p342

prioritised, they have been considered to be less clearly justiciable than those of CP rights,⁴⁵ which has had a particular effect on their consideration in court or tribunal proceedings,⁴⁶ as prohibitively expensive to realise,⁴⁷ or as requiring only progressive realisation.

There have also been concerns about the consequences of broadening the transitional justice field to address ESC rights. It has been suggested that transitional justice mechanisms are already under-resourced and time limited, that they struggle to achieve even their current aims, and that broadening their mandates will leave them overstretched to the point of becoming meaningless,⁴⁸ and could create unrealistic expectations⁴⁹ leading to inevitable failure on their own terms. For these reasons, it has been argued that mechanisms should remain “short term, legalistic and corrective”, with their limited resources focused on CP rights violations,⁵⁰ and with ESC issues left to other fields.⁵¹

Why is this a problem?

There are a number of reasons to believe that the failure of transitional justice to address ESC issues may be problematic and extremely harmful to victims, contributing to the maintenance of systemic, structural issues that can perpetuate further violations of both CP rights and ESC rights.

ESC rights are protected by treaty law such as the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR), which has been ratified by 170 States, including the UK. These States are obliged under binding international law to address violations, and transitional justice mechanisms provide a potent tool for doing so. Furthermore, it has been argued that, rather than merely requiring progressive realisation, some ESC rights such as the prevention of forced eviction are both immediately

⁴⁵ Arbour (n31), pp10-11; Robins (n7), p307

⁴⁶ Cahill-Ripley (n15), p188

⁴⁷ Arbour (n31), p11

⁴⁸ Waldorf (n8), p179; Evans (n13), pp8-9; McGonigle Leyh (n16), pp92-93

⁴⁹ Waldorf (n8), p179

⁵⁰ Cahill-Ripley (n15), pp193-194

⁵¹ Schmid, Evelyne & Nolan, Aoife (2014) ‘Do No Harm’? Exploring the Scope of Economic and Social Rights in Transitional Justice, *The International Journal of Transitional Justice*, Vol. 8, 2014, 362–382, p369

realisable⁵² and justiciable.⁵³ It is also a belief fundamental to the conceptual fabric of human rights law that CP and ESC rights are indivisible, interdependent and interrelated.⁵⁴ As the SATRC recognised:

*The consequences of human rights violations...cannot be measured only in the human lives lost through deaths, detentions, dirty tricks and disappearances, but in the human lives withered away through enforced poverty and other kinds of deprivation.*⁵⁵

The effect of prioritising CP rights over ESC rights therefore is to create, in practice, a hierarchy of rights⁵⁶ which conflicts with this principle.

Armed conflicts tend to involve a mix of CP and ESC violations,⁵⁷ and as even those truth commissions that have relegated ESC issues to historical context alone have recognised, violations of ESC rights tend to be both causes and consequences of CP violations,⁵⁸ with many examples where ESC issues such as inequality, discrimination and access to resources have led to violent conflict.⁵⁹ Leaving endemic, structural ESC issues in place may therefore lead to ongoing conflict,⁶⁰ and ensuing CP violations.⁶¹

The term ‘structural violence’ or institutional violence⁶² has been coined to refer to the effects of social, political and economic frameworks which feature unequal distributions of power and resources, and ESC issues such as racial inequalities, poverty and institutionalised discrimination.⁶³ Often these inequalities are interrelated and intersectional, with the same groups of people suffering from a number

⁵² Arbour (n31), p11

⁵³ Eide, Asbjorn, Krause, Catarina & Rosas, Allan (eds.) (2001), *Economic, Social and Cultural Rights, A Textbook*, Second Revised Edition, Martinus Nijhoff Publishers, p10

⁵⁴ Gready & Robins (n14), p346; Schmid & Nolan (n51), p362

⁵⁵ Truth and Reconciliation Commission of South Africa, 2003, Vol. 1, Ch. 4, p65, cited in Waldorf (n8), pp175-176

⁵⁶ Sharp (n27), p795

⁵⁷ Ibid, p783

⁵⁸ Gready & Robins (n14), p339; Sharp (n12), pp570-571

⁵⁹ Arbour (n31), pp8-9; Gready & Robins (n14), pp347-348 & 356

⁶⁰ Sharp (n27), p783

⁶¹ Ibid, p793; Gready & Robins (n14), p346

⁶² Galtung, Johan (1969) Violence, peace, and peace research, *Journal of Peace Research*, 6(3), p187

⁶³ Farmer, Paul (2004) An anthropology of structural violence. *Current Anthropology*, 45(3), 317, cited in Evans (n13), pp2-3; Laplante (n29), p333; Cahill-Ripley (n15), p191

of forms of discrimination.⁶⁴ To provide an example relevant to the case study, racial discrimination can lead to income inequality and discrimination in the provision of public services, which causes dependence on substandard, perhaps hazardous, social housing. It has been classed as a form of violence on the basis that these structures cause people injury,⁶⁵ by preventing them from meeting their fundamental needs and reaching their physical and mental potential.⁶⁶ It can also lead to physical injury.⁶⁷ the system of institutionalised racial segregation in apartheid South Africa for example led to a whole host of CP rights violations.⁶⁸ Dealing with any CP rights violations whilst leaving these structures in place maintains the unjust *status quo ante* which feeds into further violations.⁶⁹ As one proponent of a transformative justice approach has suggested:

*...if economic and social inequalities go unaddressed and the grievances of the poor and marginalized go unheard, we are left with only uncertain guarantees of nonrepetition. It is like treating the symptoms while leaving the underlying illness to fester.*⁷⁰

Partly as a result of the SATRC's failure to engage with structural issues, much of the ESC issues affecting black South Africans remain today.⁷¹ Proposed approaches to addressing structural violence have included holding hearings during truth commissions dedicated to the examination of ESC issues such as land inequalities (the SATRC held hearings on the role of the business sector in human rights violations⁷²), or through addressing such inequalities through reparations programmes.⁷³

It is also important to note that ESC violations tend to involve collective violations and widespread mass victimisation.⁷⁴ It has been suggested that endemic corruption and the looting of natural resources can be

⁶⁴ Galtung (n62), p171

⁶⁵ Evans (n13), p3

⁶⁶ Cahill-Ripley (n15), p192

⁶⁷ Galtung (n62), p179

⁶⁸ Sharp (n27), p793

⁶⁹ Ibid, p794; Sharp (n12), pp570-571; Robins (n7), p298

⁷⁰ Laplante (n29), p333

⁷¹ Sharp (n27), p793

⁷² Waldorf (n8), p176

⁷³ Evans (n13), p4

⁷⁴ Ibid, p4; Evans & Wilkins (n12), pp138-139

as devastating for victims and survivors as CP violations,⁷⁵ and Timor Leste's Commission for Reception, Truth and Reconciliation recognised that victims of CP violations also suffered from living conditions that were "...equally damaging and possibly more long lasting...".⁷⁶ ESC rights such as adequate housing, education and economic subsistence⁷⁷ can be so important to victims that they may even prioritise them over CP issues. Mechanisms that fail to address them may therefore lose credibility and legitimacy in the eyes of the communities they are attempting to help.⁷⁸

1.1.2.2 Participation of victims and survivors

The second major strand of criticism of transitional justice mechanisms has been that victims and survivors have not been able to adequately participate. In theory, participation is a fundamental part of democratic systems.⁷⁹ It can lead to better informed decision making, producing more effective outcomes and a more knowledgeable, empowered citizenry that is able to exert real influence over decisions as they are made, rather than having to challenge them afterwards.⁸⁰

One influential model of participation is Sherry Arnstein's "ladder of citizen participation", which visualises eight 'rungs' of increasingly meaningful participation. The bottom two rungs represent non-participation, with no attempts made by those in power to encourage either the real or illusory exercise of influence by citizens. Rungs three to five encompass tokenistic actions that may allow citizens an opportunity to express their wishes, but which are nonetheless shaped by a reluctance to give up control,⁸¹ and which retain ultimate decision-making for those in power. These actions can include informing citizens of their rights in a manner that does not really allow them the opportunity to exercise them by, for example, using complicated language and jargon that they may be unfamiliar with and so

⁷⁵ Sharp (n27), p793

⁷⁶ Timor-Leste Commission for Reception, Truth and Reconciliation, Final Report (2006), Chapter 7.9, para 1, cited in Arbour (n31), p14

⁷⁷ Gready & Robins (n14), p346

⁷⁸ Balasco (n22), p369

⁷⁹ Arnstein, Sherry (2019) A Ladder of Citizen Participation, *Journal of the American Planning Association*, Volume 85, Number 1, p24

⁸⁰ Irvin, Renee & Stansbury, John (2004) Citizen Participation in Decision Making: Is It Worth the Effort?, *Public Administration Review*, Vol 64, Issue 1, pp55-58

⁸¹ Ibid, p57

struggle to understand (rung three). They might include consultation exercises, which invite citizens to make their feelings known, but which in which there is no assurance that their suggestions will be taken into account (rung four). They could also include ‘placation’, in which there is some degree of citizen influence but still an element of tokenism, for example, by allowing citizen representatives on decision-making boards, but without the strength in numbers needed to exert real influence over final decisions (rung five). The top three rungs of the ladder cover circumstances in which citizens are enabled to exert real influence on decision-making, with genuine partnerships in which citizens and powerholders share decision-making through joint leadership structures, or opportunities for them to exercise dominant control in discrete areas or the system as a whole.⁸²

Traditional transitional justice mechanisms, like court proceedings, have tended to be formal, top-down, legalistic processes which are often alien to victim communities, with strictly bounded opportunities for a relatively small number of victims and other local actors to effectively engage with them by, for example, providing evidence at hearings.⁸³ This is part of what has been termed the field’s ‘colonial nature’,⁸⁴ dominated by an elite professional network with an externally driven, donor agenda and a limited “repertoire of options” to be drawn on and imposed regardless of the particular complexities of local contexts.⁸⁵ Arnstein’s model will be returned to in Section X to assess the levels of participation of victims and survivors evident in the Grenfell Tower Inquiry.

1.2 Transformative justice

As awareness of these criticisms grew, an assumption that transitional justice was an inherently good enterprise⁸⁶ began to give way to increasing pressure for it to evolve.⁸⁷ In 2006, the then United Nations Commissioner for Human Rights, Louise Arbour, called on the field to make a “gigantic leap”, a paradigm shift:

⁸² Arnstein (n79), pp25-33

⁸³ Gready & Robins (n14), p343; McGonigle Leyh (n16), p83

⁸⁴ Robins (n7), p306

⁸⁵ Gready & Robins (n14), pp342-343

⁸⁶ Sharp (n12), p576

⁸⁷ Balasco (n22), p371

*Transitional justice must have the ambition of assisting the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future. It must reach to, but also beyond the crises and abuses committed during the conflict which led to the transition, into the human rights violations that preexisted the conflict and caused, or contributed to it. [emphasis added]*⁸⁸

This led to the development of a new transformative theory of justice. This theory takes a longer-term view of its aims,⁸⁹ with greater emphasis on the root causes of violations in order to address the kinds of ESC issues that can drive physical violence.⁹⁰ It adopts more holistic approaches, which conceptualise spectrums of human rights that are interdependent and indivisible, and of violations as spanning a continuum that includes both interpersonal and structural violence.⁹¹ This approach goes beyond the enforcement of minimum standards of ESC rights to encompass reform of the social structures and power relationships that foster their violation.⁹² Rather than taking its cue exclusively from a pre-existing framework of black-letter law,⁹³ a transformative approach is more responsive to local, social and political contexts and the everyday concerns of victims'.⁹⁴ It has stronger links to other fields such as development and peacebuilding,⁹⁵ an emphasis on the benefits of bottom-up, grassroots, participative processes, and a broader spectrum of tools, including memorialisation and education initiatives.⁹⁶

Communities which are effectively engaged in this way may be empowered with greater agency to address the issues they face, and to access and shape the powers structures and institutions from which they have previously been excluded.⁹⁷ In being provided with a forum to meet other victims, local actors

⁸⁸ Waldorf (n8), p172

⁸⁹ Sharp (n12), p578

⁹⁰ Gready & Robins (n14), p340; Sharp (n12), p578

⁹¹ Gready & Robins (n14), p344

⁹² McGonigle Leyh (n16), p92; Robins (n7), p305

⁹³ Robins (n7), p308

⁹⁴ Gready & Robins (n14), p340; Robins (n7), p308

⁹⁵ Waldorf 2012, p172; Sharp (n12), p578

⁹⁶ Gready & Robins (n14), pp344-345

⁹⁷ Ibid, p358

can also benefit from the formation of a broader victim community.⁹⁸ Truth-seeking mechanisms, in particular, can provide a forum for marginalised communities to contribute fully to the discussion of the causes, nature and consequences of the violations that have affected them. This can lead to recommendations for transformational change such as mechanisms for broader democratic participation.⁹⁹ The Peruvian TRC for example invited victims to become involved in the development of a reparations plan, and recommended that they should benefit from it.¹⁰⁰ Outcomes are likely to be better informed by, and tailored to, the specific complexities on the ground, which may make them more effective.¹⁰¹ Examples of transformative measures might include measures for social restructuring, affirmative action, land-tenure reform,¹⁰² educational initiatives,¹⁰³ memorialisation, or reparations aimed not just at returning victims to a position of discrimination and poverty, but of bringing them out of poverty and thereby reduce the drivers of conflict.¹⁰⁴ Mechanisms may also benefit from perceptions of legitimacy and credibility in the eyes of those communities, meaning that their outcomes will be more willingly accepted and implemented.¹⁰⁵

Because the transformative justice approach is a relatively new emergence in an already young field, and as transitional justice mechanisms have largely avoided working towards transformative ends, there is not a great deal of empirical evidence against which to assess the effectiveness of the transformative approach.¹⁰⁶ However, in the last ten years the UN and the EU have both shown support for a more transformative agenda for transitional justice mechanisms.¹⁰⁷

⁹⁸ Evans (n13), p8

⁹⁹ Arbour (n31), p14; Laplante 2008, pp352-353; McGonigle Leyh (n16), p92

¹⁰⁰ Laplante (n29), pp353-354

¹⁰¹ Cahill-Ripley (n15), p212; Evans (n13), p8

¹⁰² Sharp (n27), p794

¹⁰³ Gready & Robins (n14), p355

¹⁰⁴ Ibid, p347

¹⁰⁵ Laplante (n29), p354; Evans (n13), p8

¹⁰⁶ McGonigle Leyh (n16), pp92 & 94-95

¹⁰⁷ Office of the High Commissioner for Human Rights (2015) *Joint Staff Working Document: The EU's Framework on support to transitional justice*, Doc. SWD(2015) 158 final, 7 August 2015. Available at: <http://europeanmemoranda.cabinetoffice.gov.uk/memorandum/joint-staff-working-document-the-eu-s-framework-on-support-to-transitional-justice> (Accessed: 8 August 2020)

Transitional justice is now recognised as a default tool for societies attempting to respond to periods of conflict and widespread rights abuses. It offers a range of tools and mechanisms for use in different contexts, one important category of which are truth-seeking mechanisms such as the Grenfell Tower Inquiry. However, a number of deficiencies have been identified in the individual theories of justice that transitional justice mechanisms have drawn from: in particular, the neglect of ESC rights violations which leaves victims and survivors exposed to structural violence, and a failure to allow for the adequate participation of victims and survivors. The emergence of transformative justice is designed to remedy these deficiencies, and provides a new framework against which to assess mechanisms. Given the importance of transitional justice processes around the world, and the proffered benefits of applying a transformative agenda, these two elements form the basis of this thesis' analysis of the Grenfell Tower Inquiry. But first, it is necessary to introduce truth seeking, and the particular form of truth-seeking mechanism under examination: the public inquiry.

2. Truth seeking

*Truth is fundamental to the inherent dignity of the human person.*¹⁰⁸

- UN High Commissioner for Human Rights, 2006

2.1 Truth seeking mechanisms

International truth seeking is undertaken by fact-finding investigations which can be generally placed into three categories: truth commissions, historical commissions and commissions of inquiry. Truth commissions investigate, document, analyse and report on widespread patterns of abuses of human rights or humanitarian law, including their causes and effects on society, and make recommendations. They are often also tasked with the much more ambitious aim of promoting national reconciliation, healing and unity. A commission of inquiry is a more focused fact-finding investigation, perhaps into a single event rather than a pattern of events, and without the broader mandate of repairing the harm (although the implementation of its recommendations by other organisations may well contribute to this end). A historical commission is a commission of inquiry which deals with events decades or perhaps centuries earlier. In general, these mechanisms share the aim of establishing an authoritative record of the key details of violations, and often of making recommendations to address them and prevent their reoccurrence. The work of these mechanisms - their documentation efforts and reporting - can subsequently feed into other transitional mechanisms, such as prosecutions, reparations and institutional reforms.¹⁰⁹ In the UK, the most prominent form of domestic truth-seeking mechanisms are commissions of inquiry known as ‘public inquiries’. Although these inquiries existed long before the emergence of the field of transitional justice, they nevertheless fit neatly into its truth-seeking pillar.

¹⁰⁸ UN Commission on Human Rights (2006) *Study on the Right to the Truth, Report of the Office of the United Nations High Commissioner for Human Rights*, E/CN.4/2006/91. Available at: <https://www.refworld.org/docid/46822b6c2.html> (Accessed: 11 August 2020), p15

¹⁰⁹ European Union (2015) EU Action Plan on Human Rights and Democracy: 2015 – 2019. Available at: <http://www.recom.link/wp-content/uploads/2015/11/The-EU%E2%80%99s-Policy-Framework-on-support-to-transitional-justice.pdf>. (Accessed: 2 August 2020), p6

2.2 Public inquiries

There is an episode of the popular BBC political satire, *The Thick of It*, in which a Secretary of State is shown to the audience to be clearly guilty of keeping a second home that he does not use, at the taxpayer's expense. On being found out, he asks an official what the Prime Minister is going to do about it:

So erm...what did the PM say?

There's going to be an inquiry.

*Oh yes, oh yes! Thank you, thank you...!*¹¹⁰

UK public inquiries (hereafter just 'inquiries') are *ad hoc*, fact-finding, quasi-judicial commissions of inquiry.¹¹¹ In the broadest use of the term, they come in a number of different forms, but the most prominent, and now also the most common, are statutory inquiries held under the Inquiries Act 2005 ('the 2005 Act').¹¹² In order to inform the analysis of the case study, it is necessary first to examine statutory inquiries as a mechanism – their importance and purposes, as well as their vulnerability to criticisms.

Inquiries have become a pivotal feature of UK politics, playing a prominent part in public life and governance, and acting as a major instrument of accountability.¹¹³ They are commonly considered the 'gold standard' of investigations into issues of public interest.¹¹⁴ The leading human rights advocacy

¹¹⁰ BBC Four, *The Thick of It* (2005), 19 May 2005

¹¹¹ House of Commons (2005) Public Administration Select Committee, *Government by Inquiry*, First Report of Session 2004–05, Volume I, HC 51-I. Available at: <https://publications.parliament.uk/pa/cm200405/cmselect/cmpubadm/51/51i.pdf> (Accessed: 11 August 2020), p19; Beer (n11), p141

¹¹² The Inquiries Act 2005, c. 12. Available at: <https://www.legislation.gov.uk/ukpga/2005/12/contents> (Accessed: 8 August 2020)

¹¹³ House of Commons (n111), p7; House of Lords, (2014) *Select Committee on the Inquiries Act 2005*, HL Paper 143. Available at: <https://publications.parliament.uk/pa/ld201314/ldselect/ldinquiries/143/143.pdf> (Accessed: 11 August 2020), p6; House of Commons (2018) Library, *Statutory commissions of inquiry: the Inquiries Act 2005*, SN06410. Available at: <https://commonslibrary.parliament.uk/research-briefings/sn06410/> (Accessed: 11 August 2020), p3

¹¹⁴ Institute for Government (2017) *How public inquiries can lead to change*, Available at: <https://www.instituteforgovernment.org.uk/publications/how-public-inquiries-can-lead-change> (Accessed: 8 August 2020), p6

group, Liberty, has described them as “a key component of the constitutional and administrative justice system in the UK”, acting alongside other mechanisms such as coroners’ inquests, courts and tribunals to makeup the UK’s system of administrative justice.¹¹⁵

Between 1997 and 2017, there were at least three inquiries running at any one time, with a peak of 16 in 2010.¹¹⁶ The varied allegations that they have examined include abuses within government departments or public bodies, major transport and industrial accidents, outbreaks of disease, and decision-making leading to participation in armed conflict. Whenever an issue of great public interest emerges - usually a tragedy, disaster or scandal¹¹⁷ - there are likely to be calls to hold an inquiry.¹¹⁸ Currently most prominent are the calls for an inquiry into the UK’s response to Covid-19 - which, possibly to the relief of many inquiry lawyers, seems for now to have superseded discussion of a Brexit inquiry.

The 2005 Act, and its accompanying secondary legislation, the Inquiry Rules 2006, provide the framework under which most inquiries are now convened.¹¹⁹ Under Section 1(1) of the Act, they can only be initiated by a government minister if, in the minister’s mind, there is, or is potential for, “public concern” about some particular events.¹²⁰ There is no agreement on establishing when this threshold is triggered,¹²¹ and no legal obligation under domestic law for an inquiry to be held at all - the High Court has found that “[n]o one is entitled to a public inquiry”¹²² - though the decision not to hold one has been the subject of judicial review.¹²³ In practice, inquiries tend only to be set up where there is irresistible pressure from parliament or the public.¹²⁴

¹¹⁵ House of Lords (n113), p10

¹¹⁶ Institute for Government (n114), p6; Institute for Government (2018) Public Inquiries, Available at: <https://www.instituteforgovernment.org.uk/explainers/public-inquiries> (Accessed: 8 August 2020)

¹¹⁷ Institute for Government (n114), p10

¹¹⁸ House of Commons (2016) Library, *Public Inquiries: non-statutory commissions of inquiry*, 02599. Available at: <https://commonslibrary.parliament.uk/research-briefings/sn02599/> (Accessed: 11 August 2020), p3

¹¹⁹ House of Commons (113), p4; Institute for Government (n116)

¹²⁰ Section 1(1) of the Inquiries Act 2005 (n112)

¹²¹ House of Commons (113), p8

¹²² *R (Persey) v SoS Environment, Food and Rural Affairs* [2002] QB 794. Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2002/371.html> (Accessed: 8 August 2020), para 6

¹²³ House of Commons (113), p11

¹²⁴ House of Lords (n113), p6

2.2.1 Purposes

The work of inquiries can be separated broadly into three stages: evidence gathering; the holding of oral hearings; and report writing (including, if given the mandate, the making of recommendations). In so doing, they can achieve a number of purposes.¹²⁵

2.2.1.1 Providing accountability

Perhaps the primary function of an inquiry is to provide an authoritative account of the relevant facts in a report containing “a full and fair account of what happened”.¹²⁶ This authoritative ‘truth’ can lead to accountability via the identification of wrongdoing by individuals or organisations,¹²⁷ and could subsequently lead to action by separate mechanisms such as prosecutions (inquiries do not have the power to determine civil or criminal liability).¹²⁸

2.2.1.2 Preventing reoccurrence

The inquiry report should also outline lessons to be learned about what went wrong which can inform the taking of appropriate measures to prevent reoccurrence, including legal or institutional reforms.¹²⁹ As part of this, the inquiry may be tasked with making recommendations, which can be the most important contribution an inquiry may make to the wider public interest.¹³⁰ Between 1990 and 2017, 46 inquiries made some 2,791 recommendations.¹³¹ According to the government, through their recommendations and lessons learned “[m]any inquiries have helped to bring about valuable and welcomed improvements in public services”.¹³² They have also led to institutional and legislative change on issues including gun control, industrial regulation and criminal records checks.¹³³ Such measures can

¹²⁵ Beer (n11), p128

¹²⁶ Lord Howe quoted in Ibid, p2

¹²⁷ Beer (n11), p2

¹²⁸ See Section 2 of the Inquiries Act 2005 (n112)

¹²⁹ Beer (n11), p2

¹³⁰ Institute for Government (n114), p8

¹³¹ Institute for Government (n116)

¹³² House of Commons (n111), pp8-9

¹³³ Institute for Government (n114), p3

be seen as the domestic equivalent of ‘guarantees of non-repetition’ in the broader field of transitional justice. Inquiries can also promote broader shifts in public perceptions, such as the impactful emergence of the concept of ‘institutional racism’ within London’s Metropolitan Police after the Stephen Lawrence Inquiry into a racially motivated murder.¹³⁴

2.2.1.3 Restoring public confidence

In theory, the public concern which triggered the inquiry should be at least partially allayed by the inquiry,¹³⁵ with the government having ostensibly shown that it has taken the matter seriously and responded appropriately.¹³⁶ This restoration of public confidence can lead to catharsis, reconciliation and resolution, by enabling affected parties to come together to present their cases, express their outrage, and learn from each other’s perspectives.¹³⁷ By allaying public fears, the sponsoring minister may also hope for the inquiry to repair or promote trust in the systems that it is examining, which could consequently promote trust in the government operating them.

2.2.1.4 Fulfilling legal obligations

An inquiry can also serve to discharge the state’s investigative obligations under Articles 2 and 3 of the European Convention on Human Rights (ECHR) (see Section 3.2.2.1), and to fulfill the ‘right to truth’. The right to truth is a still emerging principle, stemming historically from the recognition in international humanitarian law of the right of families of victims of forced disappearance to know what happened to them.¹³⁸ Whilst UN High Commissioner for Human Rights, Arbour championed the right to know about serious violations of international human rights law as an inalienable right to know:

¹³⁴ Ibid, p3

¹³⁵ Beer (n11), p3

¹³⁶ House of Commons (n111), pp9-10

¹³⁷ Ibid; Institute for Government (n114), p6

¹³⁸ Article 32 of the *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)* 8 June 1977, 1125 UNTS 3. Available at: <https://www.refworld.org/docid/3ae6b36b4.html> (Accessed 8 August 2020); International Convention for the Protection of All Persons from Enforced Disappearance; UN Commission on Human Rights (2006) *Study on the Right to the Truth, Report of the Office of the United Nations High Commissioner for Human Rights*, E/CN.4/2006/91. Available at: <https://www.refworld.org/docid/46822b6c2.html> (Accessed: 11 August 2020), p5

*the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them.*¹³⁹

However, this finding has since been questioned, partly because it is thought not yet sufficiently reflected in widely ratified treaty law outside of international armed conflict,¹⁴⁰ and it is not yet widely considered to be a universal norm.¹⁴¹ Nevertheless, there is a great deal of international support for the right, and it benefits from a number of references in non-binding ‘soft law’ instruments, including resolutions of the former UN Human Rights Commission, the Human Rights Council and the General Assembly.¹⁴² There is even a UN Special Rapporteur whose mandate includes the promotion of truth.¹⁴³ Although the European Court of Human Rights (ECtHR) has not addressed the issue explicitly, it has inferred the existence of a ‘right to know’ in relation to the procedural limbs of Articles 2 and 3 of the ECHR¹⁴⁴ - to which the UK is a state party - as subsumed within the right to an effective investigation and to be informed of its results.¹⁴⁵ The right to truth is widely seen as fundamental to processes of transitional justice.¹⁴⁶

¹³⁹ Ibid, pp2, 4 & 14

¹⁴⁰ Sweeney, James (2018) The elusive right to truth in transitional human rights jurisprudence, *International and Comparative Law Quarterly*, Vol 67, April 2018, p358

¹⁴¹ Ibid, pp354 & 357; Stephan Parmentier, “Truth Commissions”, lecture at the Global Campus of Human Rights, Venice, November 2019

¹⁴² Sweeney (n140), p356; Human Rights Commission Resolution 2005/66 (20 April 2005) UN Doc E/CN.4/RES/2005/ 66. Available at: https://ap.ohchr.org/documents/alldocs.aspx?doc_id=11160 (Accessed: 8 August 2020); Human Rights Council Resolution 12/12 (October 12 2009) UN Doc A/HRC/RES/12/12. Available at: https://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=100&t=11 (Accessed: 8 August 2020); United Nations General Assembly Resolution 68/165 (18 December 2013) UN Doc A/RES/68/165. Available at: <https://undocs.org/en/A/RES/68/165> (Accessed: 8 August 2020); United Nations Economic and Social Council, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, UN Doc E/CN.4/2005/102. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement> (Accessed: 8 August 2020); UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc A/RES/60/147. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement> (Accessed: 8 August 2020)

¹⁴³ Sweeney (n140), p357

¹⁴⁴ See *El Masri v the former Yugoslav Republic of Macedonia* (App No 39630/09) (2013) 57 EHRR 25. Available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-110887%22%7D> (Accessed: 8 August 2020), para 191

¹⁴⁵ OHCHR 2006, p9

¹⁴⁶ Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Situations (2004) UN Doc S/2004/616, 4, 17, cited in Sweeney (n140), p353

2.2.1.5 Performing political functions

Perhaps less nobly, a government may hope to show in initiating an inquiry that it has taken the necessary steps to respond to events, and that the inquiry will ultimately allow it to put the events behind it and move on, particularly in relation to allegations of its own misconduct. In the shorter term, an inquiry can also serve as a useful tool for the government to deflect awkward questions until the inquiry's work is completed, by which time public anger may have abated. Hence, perhaps, the fictional Secretary of State's relief in *The Thick Of It*.

2.2.2 Criticisms of inquiries

Inquiries have routinely attracted criticism, most commonly in relation to their choice of chair/panel, their terms of reference, the participation of victim communities, their duration and their cost, the lack of guidance available for those running them, and the lack of monitoring of the implementation of their recommendations.¹⁴⁷

One of the most important, and potentially controversial, steps in initiating an inquiry is the appointment of a chair/panel. As inquiries are run independently,¹⁴⁸ this factor is key to the integrity of the process.¹⁴⁹ This appointment is the sole responsibility of the sponsoring minister,¹⁵⁰ and they may appoint panel members at any point in the life of the inquiry.¹⁵¹ The first question for the minister to consider is whether the inquiry should be led by a chair sitting alone, or whether it is appropriate to appoint panel members.¹⁵² There is no established guidance as to which is best in each case.¹⁵³ However, under Section 8 of the 2005 Act, the minister has a duty (i) to ensure that, as a whole, the chair or panel has the necessary expertise to fulfil their mandate - taking into account the assistance offered by any assessors

¹⁴⁷ House of Commons (113), p3

¹⁴⁸ Ibid, p4

¹⁴⁹ National Audit Office (2018) *Investigation into government-funded inquiries*, HC 836, Session 2017-2019, 23 May 2018. Available at: <https://www.nao.org.uk/report/investigation-into-government-funded-inquiries/> (Accessed: 8 August 2020), p4

¹⁵⁰ Section 4(1) of the Inquiries Act 2005 (n112)

¹⁵¹ Section 7(1) of Ibid

¹⁵² Section 3(1) of Ibid

¹⁵³ Beer (n11), p113

(see Section 2.2.2) and (ii) to have regard to the need for balance, considered against the background of the Inquiry's terms of reference (ToR) (see Section 2.2.2). Failure to achieve this overall expertise and balance can have significant consequences, affecting the effective running of the inquiry, the relevance of any recommendations made, and public trust¹⁵⁴ - if, for example, the chair/panel do not have the confidence of victim communities, the effectiveness, acceptance and implementation of any outcomes may be severely undermined.¹⁵⁵

In making the decision as to the composition of the chair/panel, the minister may consider that a single chair may be able to work more quickly and effectively through complex facts and issues than a multi-person panel, run more expeditious hearings and require a less lengthy inquiry at a reduced cost to the public purse. There may also be some advantage in terms of clarity and consistency in an inquiry report that is drawn from one mind instead of many (although even the report of a single chair will have been influenced and fed into by the many minds, particularly the lawyers supporting them).

Two former inquiry chairs told a House of Lords Committee on the 2005 Act: "I did not want to get myself into a position where I was having to compromise what I thought needed to be said by having to trade off with others" and "... a report written by a committee is a rather different animal from one that an individual chairman...it is more likely to be a compromise, for obvious reasons. I think there are disadvantages with that."¹⁵⁶ The Committee subsequently recommended to the government that inquiries should normally have a single chair "unless there are strong arguments to the contrary", and this recommendation was accepted by the government as "an important consideration in controlling the overall costs of inquiries".¹⁵⁷

However, if the matters of public concern are particularly controversial or complex, perhaps requiring detailed subject-specific knowledge to comprehend, such as the intricacies of the machinery of

¹⁵⁴ Ibid, p398

¹⁵⁵ National Audit Office (n149), p4

¹⁵⁶ House of Lords (n113), p46

¹⁵⁷ Ministry of Justice (2014) *Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005*, Cm 8903. Available at: https://www.parliament.uk/documents/lords-committees/Inquiries-Act-2005/Cm8903_Government%20response%20to%20HL%20Committee%20on%20the%20Inquiries%20Act%202005_260614_TSO_Print.pdf (Accessed: 11 August 2020), p10

government,¹⁵⁸ or discrete areas of policy, a chair sitting alone may not be best placed to execute the inquiry's mandate. There is also some risk in having the entirety of the project ultimately falling on one pair of shoulders: with greater potential for error if a chair is not regularly challenged by others of comparable seniority; and potential for the inquiry to become inextricably linked with one individual, and the consequent damage that might be done to the credibility of the inquiry as a whole if the perception of that individual suffers. In such circumstances, the chair may benefit greatly from the support of panel members who bring with them special expertise,¹⁵⁹ particularly if the inquiry is tasked with making (well informed) recommendations. Well respected panel members may further serve to strengthen public trust in the inquiry.¹⁶⁰

Alternatively (or additionally), a chair can also draw on the expertise of expert witnesses¹⁶¹ and 'assessors'. Expert witnesses provide *ad hoc* written and oral evidence on areas of specialised expertise, whilst assessors are subject-matter experts who provide longer term assistance to the chair/panel,¹⁶² providing informal advice, attending hearings, reviewing submissions and even perhaps suggesting lines of witness questioning to counsel.¹⁶³ They can be appointed at any stage of the inquiry,¹⁶⁴ and may provide a lone chair with the requisite knowledge without necessitating the appointment of panelists.¹⁶⁵

Once the minister has decided whether to appoint a single chair or a panel, they will then need to decide who is best placed to perform these roles. Some chairs have been selected because they already have the required subject matter expertise due to a long career in a relevant field, whilst others have been appointed due more to their status and reputation¹⁶⁶ - for the latter reason, there has been a tendency to appoint serving or retired judges.¹⁶⁷

¹⁵⁸ Beer (n11), pp119 & 122

¹⁵⁹ Institute for Government (n114), p18

¹⁶⁰ Beer (n11), p122

¹⁶¹ Ibid, pp 129 & 139

¹⁶² Section 11 of the Inquiries Act 2005 (n112); Beer (n11), p127

¹⁶³ Grenfell Tower Inquiry, *Protocol on the Role of Assessors*, 15 November 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/Protocol-on-the-Role-of-Assessors_0.pdf (Accessed: 8 August 2020)

¹⁶⁴ Beer (n11), p128

¹⁶⁵ House of Lords (n113), p46

¹⁶⁶ House of Lords (n113), p44

¹⁶⁷ Institute for Government (n116)

Judges have advanced legal expertise and long-honed skills in defining issues, assessing evidence, determining facts and managing hearings.¹⁶⁸ The appointment of a judge may therefore be appropriate for an inquiry dealing with particularly complex or contested fact patterns.¹⁶⁹ As the UK's judiciary are not subject to election, and senior judges have security of tenure, they command considerable trust amongst the general public for their independence and neutrality,¹⁷⁰ and so are also well placed to consider controversial topics such as allegations of government misconduct. One further advantage from a public administration perspective is that judges are already employed by the state, so they can be transferred from their normal duties without cost-implications.¹⁷¹

However, an issue with appointing judges which is becoming increasingly prominent is a lack of diversity amongst the judiciary. One particularly eye-catching piece of research found that, between 1990 and 2017, there were only six inquiries chaired by a woman - a smaller number than those chaired by men called William or Anthony.¹⁷² According to the latest figures, just 32% of court judges are women, and only 7% have self-declared as Black, Asian or Minority Ethnic.¹⁷³ In a 2019 report, two thirds of senior judges were found to have attended private schools (whereas the figure for the general population was 7%), and 71% went to Oxford or Cambridge Universities (only 1% did so from the general population).¹⁷⁴

The effects of this lack of diversity in gender, ethnicity and class are exacerbated by many of the working practices that judges enjoy. They tend to emerge from a particularly rarefied working world,

¹⁶⁸ House of Lords (n113), p42

¹⁶⁹ House of Commons (n111), p19

¹⁷⁰ Ibid, pp19-20

¹⁷¹ Ibid, p20

¹⁷² Institute for Government (n116)

¹⁷³ Judiciary.uk, Judicial Diversity Statistics 2019. Available at: <https://www.judiciary.uk/wp-content/uploads/2019/07/Judicial-Diversity-Statistics-2019-1.pdf>, (Accessed: 11 August 2020), p1

¹⁷⁴ Social Mobility Trust (2019) *Elitist Britain 2019: The educational background of Britain's leading people*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/811045/Elitist_Britain_2019.pdf (Accessed: 8 August 2020), pp4-5

with high salaries (in the region of £200,000 for senior judges¹⁷⁵ - around 7 times the UK average¹⁷⁶) high social status, and they routinely receive theatrical deference from those they work with. Inevitably therefore, their understanding of the lives of disadvantaged victim communities may be largely academic. Even non-legal chairs tend to be drawn from trusted, higher status professions such as scientists, doctors and engineers.¹⁷⁷

This lack of diversity results in a broad gap in the knowledge and experience of (otherwise highly skilled) individuals, which could clearly be a problem if they are asked to fulfill a mandate that includes the examination of issues such as poverty, discrimination or other ESC disadvantages with which they are likely to be personally and professionally unfamiliar.

The next major area of controversy is the inquiry's ToR, which sets out the matters that will be investigated by the inquiry, any particular facts that the inquiry is tasked to determine, and whether it is mandated to make recommendations.¹⁷⁸ Their drafting is crucial for determining the inquiry's effectiveness, length and cost, and for setting expectations. In practice, they are often carefully circumscribed. The Council of Tribunals, a now defunct advisory body which reported to the government on the administration of statutory inquiries, suggested in 1996 that:

*...care should be taken to ensure that the terms of reference go no wider than is necessary to fulfill the specific need which the Minister has in mind when setting up the inquiry. If the terms of reference are too wide, this may result in unnecessary cost and delay, and may introduce questions which merely confuse the essential lines.*¹⁷⁹

¹⁷⁵ Ministry of Justice (2019) *Ministry of Justice Judicial Salaries from 1 October 2019*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836749/judicial-salary-schedule-oct-2019.pdf (Accessed: 2 August 2020), p2

¹⁷⁶ The Independent, *Is someone earning £80,000 a year in the top 5% and how much tax do they pay?*, 22 November 2019. Available at: <https://www.independent.co.uk/news/business/news/income-tax-top-5-per-cent-inequality-labour-plans-a9213781.html#explainer-question-1> (Accessed: 8 August 2020)

¹⁷⁷ Institute for Government (n116)

¹⁷⁸ Section 5(6) of the Inquiries Act 2005 (n112)

¹⁷⁹ Annual report of the Council on Tribunals for 1995/96 HC 114, cited in Beer (n11), p73; see also Cabinet Office (undated) *Inquiries Guidance: Guidance for Inquiry Chairs and Secretaries, and Sponsor Departments*. Available at: <https://www.parliament.uk/documents/lords-committees/Inquiries-Act-2005/caboffguide.pdf> (Accessed: 8 August 2020)

On the other hand, public confidence in the inquiry could be undermined if the ToR are deemed insufficiently broad to fully address the events under examination.¹⁸⁰

The ToR too are set by the government minister establishing the inquiry.¹⁸¹ Although the minister is required to consult with the chair on the proposed ToR,¹⁸² there is no legal obligation on them to consult more widely.¹⁸³ However, government guidance suggests that, before making any recommendations on the ToR, a chair may wish themselves to consult with victim communities,¹⁸⁴ and it is increasingly common for them to do so.¹⁸⁵ The benefits of this can include ensuring that the final ToR are fully informed, taking into consideration the perspective of affected parties, and helping to build trust in the inquiry from the start. However, the dynamic involved in this consultation will often be between a victim community keen to have all the relevant facts and issues explicitly included in a relatively broad, comprehensive ToR,¹⁸⁶ and a chair and minister cognisant of the benefits of reporting within a limited time and budget, and of restricting the scope of the inquiry to matters suitable for technocratic examination. Once the ToR have been finalised, a statutory inquiry has no powers to act outside them.¹⁸⁷ However, it is expected to ‘interpret’ them¹⁸⁸ and to publicly explain this interpretation,¹⁸⁹ and it has been suggested that this gives a chair some discretion to explore issues that they consider most relevant, even if they are not explicitly included.¹⁹⁰

Inquiries have also been criticised for the extent to which they engage with victims and survivors. In 1989, a former chair suggested that the role of an inquiry included:

¹⁸⁰ National Audit Office (n149), p4

¹⁸¹ Beer (n11), p74

¹⁸² Section 5(4) of the Inquiries Act 2005 (n112)

¹⁸³ National Audit Office (n149), p8

¹⁸⁴ Ibid, p16

¹⁸⁵ House of Commons (113), p10; Institute for Government (n116)

¹⁸⁶ Institute for Government (n114), p15

¹⁸⁷ Section 5(5) of the Inquiries Act 2005 (n112)

¹⁸⁸ House of Commons (113), p10

¹⁸⁹ Beer (n11), pp76-78

¹⁹⁰ House of Commons (n111), p32

*...funneling the arguments away from the anarchy and subjectivity of public debate and into the apparently objective and orderly forum of a proceeding which the world can watch but in which nobody speaks unless spoken to. [emphasis added]*¹⁹¹

This austere, rather Victorian sentiment, illustrates the more traditional, legalistic conceptualisation of the inquiry as a courtroom - with a judge presiding at the top of a strict hierarchy in which everyone knows their place and opportunities for participation are strictly regulated. The result of this approach is that inquiries are sometimes seen by victims and survivors as unrepresentative, alienating and remote, and as failing to provide adequate opportunity to effectively contribute to the process.¹⁹²

The most extensive way for victims and survivors to participate in an inquiry is by being designated as a core participant: a person or organisation who is judged by the chair to have a special interest in the inquiry's subject matter (or who may be subject to criticism during proceedings).¹⁹³ Once so designated, core participants should receive funding for legal representation¹⁹⁴ and copies of the documentation which is to be referenced at oral hearings,¹⁹⁵ they may make opening and closing statements,¹⁹⁶ and they can suggest questions for counsel to the inquiry to ask of witnesses.¹⁹⁷ According to Jason Beer QC, one of the leading authorities on inquiries, an inquiry "must fully engage its core participants...and treat them with courtesy."¹⁹⁸ One legal representative for bereaved families has suggested that asking questions of witnesses is one of the first things that victims and survivors want to know about:

¹⁹¹ Sedley (1989) *Public Inquiries: A Cure or a Disease*, *Modern Law Review*, 52(4), p470

¹⁹² JUSTICE Human Rights Conference 2020, "Inquests and Inquiries", Paul Bowen QC, 7 July 2020

¹⁹³ Rule 5(2) of the Inquiry Rules 2006 (SI 2006/1838). Available at:

<https://www.legislation.gov.uk/uksi/2006/1838/contents/made> (Accessed: 8 August 2020); Beer (n11), pp156-157

¹⁹⁴ Beer (n11), p346

¹⁹⁵ Ibid, pp160-161

¹⁹⁶ Rule 11 of the Inquiry Rules 2006 (SI 2006/1838). Available at:

<https://www.legislation.gov.uk/uksi/2006/1838/contents/made> (Accessed: 8 August 2020); Beer (n11), p162

¹⁹⁷ Ibid, pp167-168

¹⁹⁸ Ibid, p169

*It is both disempowering and disconnecting to remove that right from them...To silence them and remove that right means that they are certainly not at the heart of that process, as they should be.*¹⁹⁹

However, under Rule 10(1) of the Inquiry Rules 2006, the general rule is that only counsel (or the solicitor) to the inquiry may ask questions of a witness - legal representatives of victims and survivors may only ask a witness questions if granted special permission by the chair. The advantages of this include maximising the efficiency of hearings from the perspective of counsel to the inquiry. However, a leading law reform and human rights organisation, JUSTICE, is considering making a recommendation that Rule 10 be amended so that, in relation to inquiries engaging Articles 2 and 3 of the ECHR, there would be a presumption that any application by a core participant to ask questions directly of witnesses will be allowed.

Other ways that inquiries have attempted to encourage participation is by holding designated hearings to commemorate victims in cases where Article 2 ECHR is engaged, and increasingly by including ‘pen portraits’ of those killed in a final report.²⁰⁰ The ongoing Independent Inquiry into Child Sexual Abuse has done extensive work to engage with victims and survivors, including by: running a ‘Truth Project’ alongside the Inquiry which offers the opportunity for anyone to come forward to share their experiences, without the limitations that necessarily restrict the number of witnesses giving evidence to the Inquiry’s formal investigations; creating a ‘forum’ providing victims and survivors with information, updates and access to online and face-to-face events; and creating an eight member Victims and Survivors’ Consultative Panel, set up to provide advice and guidance to the chair and panel.²⁰¹

There are no statutory time limits for inquiries. Those operating between 2005 and 2018 took on average around three years to complete their work.²⁰² However there is a great deal of variation here, with the shortest inquiry concluding between 1990 and 2017 taking just 45 days, and the longest more than 13

¹⁹⁹ JUSTICE (n192), Charlotte Haworth Hird

²⁰⁰ Ibid

²⁰¹ Independent Inquiry into Child Sexual Abuse, homepage. Available at: <https://www.iicsa.org.uk/> (Accessed: 8 August 2020)

²⁰² National Audit Office (n149), p9

years.²⁰³ This is largely a factor of variation in the scope and complexity of subject matter that inquiries are set up to examine. In the course of their work, they may have to review hundreds of thousands, perhaps millions, of documents, and take evidence from hundreds of witnesses. There are also lengthy statutory processes, such as the use of ‘warning letters’ to provide advance notice to anyone who may be subjected to criticisms in the report, with an opportunity offered for them to respond and have those responses taken into account.²⁰⁴

Victims therefore often have to wait for considerable periods before they can benefit from the closure or catharsis that an inquiry can offer. In more extreme examples, such as the seven year Chilcot Inquiry into the UK’s role in the 2003 invasion of Iraq, it can also mean that any lessons learned and recommendations lose some of their impact and effectiveness - if the practices under examination have changed in the meantime,²⁰⁵ or the political context has shifted after a change of government.²⁰⁶ There is also the real danger of similar incidents reoccurring in the interim.²⁰⁷ The duration of an inquiry will also have a significant impact on its costs. The 26 inquiries which were initiated and concluded between 2005 and 2018 cost in total more than £239 million of public funds²⁰⁸ (around 260 million Euros at the time of writing). One famously lengthy example, the Bloody Sunday Inquiry into the killing of civilians by British forces during the Troubles in Northern Ireland, cost £210.6 million in 2017 prices.²⁰⁹

The effects of an inquiry’s duration can be significantly mitigated by the issuing of interim reports:²¹⁰ providing recommendations which can be implemented before the inquiry concludes, communicating the inquiry’s provisional views to frame its ongoing work, and informing any concurrent processes (such as criminal investigations) of the inquiry’s emerging views.²¹¹ This approach can be facilitated by structuring the inquiry’s work into discrete modules, each with a report issued at its conclusion.

²⁰³ Institute for Government (n116)

²⁰⁴ Rules 13-16 of the Inquiry Rules 2006 (SI 2006/1838). Available at: <https://www.legislation.gov.uk/ukSI/2006/1838/contents/made> (Accessed: 8 August 2020); see Beer (n11), p161

²⁰⁵ Institute for Government (n114), p20

²⁰⁶ Beer (n11), pp399-400

²⁰⁷ Institute for Government (n114), p4

²⁰⁸ National Audit Office (n149), p18

²⁰⁹ Institute for Government (n116)

²¹⁰ Section 24(3) of the 2005 Act; Institute for Government (n114), p4

²¹¹ Beer (n11), p389

There appears to be little authoritative guidance on the setting up or running of an inquiry, with one government document produced by the Cabinet Office described in 2012 as a draft. In practice, the form of each inquiry is dictated largely by the chair, perhaps with the help of ‘lessons learned’ papers produced by previous inquiries, although even these have been difficult to locate.²¹² Inquiry have had varied practices in even the most core areas.²¹³

There is currently no central mechanism for monitoring the acceptance and implementation of recommendations.²¹⁴ Inquiries have a fundamentally advisory function:²¹⁵ under the 2005 Act, an inquiry comes to an end as soon as the chair confirms to the minister that its ToR have been fulfilled.²¹⁶ There is no statutory provision for what the government decides to do in light of an inquiry’s recommendations, and no other legal requirement for it to accept and implement them, nor even to respond.²¹⁷ The government’s own guidance suggests that it will provide reasons for not accepting recommendations, where practicable, and it is the practice for the sponsoring minister to make an initial response in a written or oral statement to Parliament, but the varying levels of detail in these statements can make it difficult to understand which recommendations will be implemented and which will not.²¹⁸

This is not to say that recommendations are routinely ignored. The evidence suggests that they tend to receive a mixed response, with some accepted and some not.²¹⁹ However, this is still striking given the amount of time, resources and effort that goes into the work of completing an inquiry, and the significance of, and public interest in, the subject matter they are established to examine, particularly for victims and survivors. Some inquiries have chosen to adjourn after producing their report, to enable

²¹² Institute for Government (n114), pp19-20

²¹³ Beer (n11), preface, px

²¹⁴ Ibid, p31

²¹⁵ Ibid, p397

²¹⁶ Section 14(1) of the Inquiries Act 2005 (n112)

²¹⁷ Beer (n11), p396

²¹⁸ National Audit Office (n149), p29

²¹⁹ Institute for Government (n114), p8; INQUEST, Parliamentary Briefing: Grenfell Debate, 30 October 2019. Available at: <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=db974ce3-f8ac-4a96-b003-d51232c8a84b> (Accessed: 11 August 2020), p2

them to reconvene later to check on implementation.²²⁰ A House of Lords Select Committee has recommended that a statutory duty should be introduced on public bodies to account for their acceptance and implementation of inquiry recommendations.²²¹ There have also been calls for a unit within government or an independent body to be established dedicated to providing support and expertise to inquiries,²²² although these have so far been rejected by government. This would be in the spirit of Human Rights Commission Resolution 2005/66 on the right to truth, which “Encourages the States concerned to disseminate, implement, and monitor implementation of, the recommendations of non-judicial mechanisms such as truth and reconciliation commissions...”²²³

As discussed in this section, UK inquiries are a type of commission of inquiry which falls neatly under the truth-seeking pillar of transitional justice. As such, it is appropriate to subject them to the same analytical frameworks as other transitional justice mechanisms. Inquiries play a prominent role in UK public life, occupying a central place in its constitutional and administrative framework. They are an important tool for fulfilling the State’s investigative functions under both the ECHR and the emerging ‘right to truth’, providing accountability by identifying those responsible for harm suffered, helping to prevent that harm from reoccurring, and working to restore public confidence. However, they have also been subject to frequent criticism, including with regards to the drafting of their ToRs and the extent to which they have engaged with victims and survivors, both of which can be fundamentally affected by the selection of a chair (and panel). There is inconsistency in their procedures which are not laid down by statute, and there is no comprehensive monitoring of the implementation of their recommendations. These features will form the basis in the next chapter of the examination of the case study.

²²⁰ House of Commons (n111), pp50-51

²²¹ National Audit Office (n149), p31

²²² INQUEST, Parliamentary Briefing: Grenfell Debate, 30 October 2019. Available at: <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=db974ce3-f8ac-4a96-b003-d51232c8a84b> (Accessed: 11 August 2020), p1

²²³ Human Rights Commission Resolution 2005/66 (20 April 2005) UN Doc E/CN.4/RES/2005/66. Available at: <https://www.refworld.org/docid/45377c7d0.html> (Accessed: 11 August 2020)

3. Case Study: The Grenfell Tower Inquiry

*Across the UK, inequality shapes lives - and, as Grenfell shows,
also often selects for death.*²²⁴

The images of Grenfell Tower ablaze were seen on the front pages of newspapers around the world.²²⁵ The impact in the UK was so great that the Prime Minister, Theresa May, announced the next day that there would be a public inquiry into the disaster, saying “we need to know what happened”.²²⁶ The Grenfell Tower Inquiry formally opened on 15 September 2017.²²⁷ It was split into two phases, with Phase 1 examining what happened on the night of the fire, and Phase 2 looking at the circumstances and causes leading up to it.

Phase 1 has now concluded, and an interim Phase 1 report was released on 30 October 2019.²²⁸ Phase 2 hearings began in January 2020 and, after a suspension due to the Covid-19 pandemic, restarted in July 2020. Before the suspension, the Inquiry’s provisional timetable showed it holding hearings until summer 2021, after which it will produce a Phase 2 report. However, this report may not now be published until 2022 or later.²²⁹

In order to answer the thesis’ main research question about the extent to which the Inquiry can be described as transformative, it will now examine two core elements of the Inquiry’s work: the drafting of its ToR, and the participation of victims and survivors. Key to both issues has been the appointment of a chair and panel.

²²⁴ O’Cinneide, Colm (2019) Grenfell and the Limited Reach of Equality within the UK Constitutional Order, *Queen Mary Human Rights Review*, 5(2), p1

²²⁵ The Guardian, *Newspapers around the world react to the Grenfell Tower fire – in pictures*, 15 June 2017. Available at: <https://www.theguardian.com/uk-news/gallery/2017/jun/15/newspapers-around-the-world-react-to-the-grenfell-tower-fire-in-pictures> (Accessed: 8 August 2020)

²²⁶ BBC, *Grenfell Inquiry: What is happening?*. Available at: <https://www.bbc.com/news/uk-44158516>. Accessed: 11 August 2020)

²²⁷ *Grenfell Tower Inquiry, Frequently asked questions*. Available at: <https://www.grenfelltowerinquiry.org.uk/about/faqs> (Accessed: 8 August 2020)

²²⁸ Grenfell Tower Inquiry, *Phase 1 Report*, Grenfell Tower Inquiry, 30 October 2019, HC 49-I to IV. Available at: <https://www.grenfelltowerinquiry.org.uk/phase-1-report> (Accessed 8 August 2020) (Accessed 8 August 2020)

²²⁹ JUSTICE (n192), Nicholas Griffin QC

3.1 Appointment of chair and panel

On 29 June 2017, the Prime Minister appointed Sir Martin Moore-Bick, a retired Court of Appeal Judge, to chair the Inquiry.²³⁰ He had been recommended by the head of the judiciary in response to a request “for the name of a judge who, in his view, would be best suited to the task and available to start work immediately”.²³¹ Sir Martin studied at Cambridge University, before specialising as a barrister in:

*...disputes relating to the carriage of goods by sea and road, commodity trading, general sale of goods, insurance and reinsurance, arbitration law and practice, banking and financial matters, and other kinds of commercial contracts.*²³²

He then spent 10 years as a High Court Judge, sitting mainly in the Commercial Court,²³³ before being appointed to the Court of Appeal, from which he retired in 2016.

His appointment as chair did not get off to a good start. Critics pointed to a 2014 Court of Appeal case in which he gave the leading judgment that a local authority was not in breach of its statutory obligations by housing a homeless family 50 miles away from their previous home, and outside its own area.²³⁴ The appellant’s solicitors suggested at the time that the decision could have dire consequences for vulnerable families across the country. It gives the green light for councils to engage in social cleansing of the poor

²³⁰ Grenfell Tower Inquiry, Letter from the Chair to the Prime Minister, 28 June 2017. Available at: <https://assets.grenfelltowerinquiry.org.uk/Letter-from-the-Prime-Minister-appointing-Sir-Martin.pdf> (Accessed: 8 August 2020)

²³¹ Parliament, *Grenfell Tower Fire: Written statement – HLWS19*, 29 June 2017. Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2017-06-29/HLWS19/> (Accessed: 8 August 2020)

²³² <https://twentysex.com/people/martin-moore-bick/>

²³³ Ibid

²³⁴ *Nzolameso v Westminster City Council* [2014] EWCA Civ 1383. Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2014/1383.html> (Accessed: 8 August 2020); The Guardian, *Grenfell inquiry judge let council rehouse tenant 50 miles away*, 29 June 2017. Available at: <https://www.theguardian.com/uk-news/2017/jun/29/grenfell-inquiry-judge-martin-moore-bick-let-council-rehouse-tenant-50-miles-away> (Accessed: 8 August 2020)

on a mass scale.”²³⁵ The decision was subsequently overturned by the Supreme Court.²³⁶ Awareness of this decision led to early calls from victims and survivors for Sir Martin to be replaced.²³⁷

Justice4Grenfell, a community-led organisation set up to obtain justice for the bereaved families, survivors and the wider local community, expressed its disappointment that:

*...despite assurances from the Prime Minister – the survivors and residents have not been consulted before the appointment of Judge Sir Martin Moore-Bick...This further compounds the survivors and residents sense of distrust in the official response to this disaster.*²³⁸

On a visit by the chair to the site of the fire, it was reported in a legal journal put out by the Law Society of England and Wales, that:

*Unfortunately – but perhaps inevitably – he looked and sounded like a retired appeal judge. On his next visit to the neighbourhood he dressed down slightly, appearing without a tie, but articulate local campaigners still seemed to get the better of him.*²³⁹

The chair made his opening statement in a grand central London hall, advertised by its management as featuring “[a]rched ornate ceilings, beautiful wood-panelling and dramatic chandeliers [sic]”.²⁴⁰ This statement was criticised as being overly legalistic, outlining in detail the structure and nature of the

²³⁵ Hodges, Jones & Allen, *Hodge, Jones & Allen to pursue Supreme Court challenge over council decision to re-house client 50 miles away from London*, 4 November 2014. Available at: <https://www.hja.net/press-releases/hodge-jones-allen-to-pursue-supreme-court-challenge-over-council-decision-to-re-house-client-50-miles-away-from-london/> (Accessed: 8 August 2020)

²³⁶ *Nzolameso v Westminster City Council* [2015] UKSC 22. Available at: <https://www.bailii.org/uk/cases/UKSC/2015/22.html> (Accessed 8 August 2020)

²³⁷ The Islington Tribune, ‘Grenfell needs a judge who can understand humans’ say campaigners, 7 July 2017. Available at: <http://islingtontribune.com/article/grenfell-needs-a-judge-who-can-understand-humans-say-campaigners?sp=8&sq=Landmark> (Accessed: 8 August 2020)

²³⁸ Justice4Grenfell, *J4G’s response to appointment of judge to lead public inquiry*. Available at: <https://justice4grenfell.org/94/> (Accessed: 8 August 2020)

²³⁹ The Law Society Gazette, *Trained to get at the truth*, 17 July 2017. Available at: <https://www.lawgazette.co.uk/commentary-and-opinion/trained-to-get-at-the-truth/5062053.article> (Accessed: 8 August 2020)

²⁴⁰ <https://www.devere.co.uk/grand-connaught-rooms/>

inquiry's proceedings, including such details as the font size to be used in written submissions,²⁴¹ as victims and survivors looked on.

In her letter of appointment to Sir Martin, the Prime Minister indicated that “[i]t is not proposed to appoint any other members to the Inquiry Panel at this stage.”²⁴² In November 2017, the chair appointed three assessors. At the Inquiry's preliminary hearing, the chair suggested that he would expect assessors to sit with him during hearings and see all the evidence.²⁴³ This is significant because, as outlined above, the support offered by assessors is one of the considerations that the Prime Minister was entitled to take into account, under Section 8 of the 2005 Act, when ensuring that the chair or panel had the necessary expertise to fulfill their ToR. According to the Inquiry's website, one is an expert in building design and construction, another has experience advising local government, including the management of housing and procurement, and the third has significant expertise in community engagement with disadvantaged groups, social housing and urban regeneration, from roles in local and central government.²⁴⁴ However, the expert in local government stepped down at the end of Phase 1 of the Inquiry “to focus on her other commitments”.²⁴⁵ Requests from victims and survivors to appoint a local resident as an assessor were rejected by the Chair on the grounds that it would undermine perceptions of his impartiality in the eyes of other core participants.²⁴⁶ In July 2020, the Mayor of London called for an assessor to be appointed

²⁴¹ The Guardian, *Grenfell inquiry head pledges to get at truth behind cause of fire*, 14 September 2017. Available at: <https://www.theguardian.com/uk-news/2017/sep/14/grenfell-inquiry-get-truth-caused-fire-retired-judge-moore-bick> (Accessed: 8 August 2020)

²⁴² Grenfell Tower Inquiry, Letter from the Chair to the Prime Minister, 28 June 2017. Available at: <https://assets.grenfelltowerinquiry.org.uk/Letter-from-the-Prime-Minister-appointing-Sir-Martin.pdf> (Accessed: 8 August 2020)

²⁴³ Parliament, Petition: *Call on PM to take action to build public trust in the Grenfell Tower Inquiry*. Available at: <https://petition.parliament.uk/archived/petitions/206722> (Accessed: 8 August 2020); Grenfell Tower Inquiry, Transcript of oral hearing, 14 September 2017. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/Transcript-of-Inquiry-opening-14-September-2017.pdf> (Accessed: 8 August 2020), p5

²⁴⁴ Grenfell Tower Inquiry, *Assessors*. Available at: <https://www.grenfelltowerinquiry.org.uk/about/assessors> (Accessed: 8 August 2020)

²⁴⁵ Grenfell Tower Inquiry, *Update from the Inquiry*, 22 November 2019. Available at: <https://www.grenfelltowerinquiry.org.uk/news/update-inquiry-22> (Accessed: 8 August 2020)

²⁴⁶ Grenfell Tower Inquiry, Transcript of oral hearing, 14 September 2017. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/Transcript-of-Inquiry-opening-14-September-2017.pdf> (Accessed: 8 August 2020), p4

with expertise in social housing, inequality and discrimination.²⁴⁷ The Inquiry has also commissioned evidence from at least 15 expert witnesses, on areas including architectural design and construction, fire protection, building controls, water and gas supply, toxic gases, firefighting procedures and response, and identifying human remains.²⁴⁸ None have been experts in ESC issues such as inequality and discrimination, or their effects on residents of social housing.²⁴⁹

On 21 December 2017, the Prime Minister confirmed that she would not, at that point, be appointing any panel members to assist the chair:

*Having regard to the assistance that may be provided by...[the three] assessors, and the Terms of Reference which it is the Inquiry's role to deliver, I believe that the Inquiry has the necessary expertise to undertake its work. I am also very conscious of the need for the Inquiry to complete its initial report as quickly as reasonably possible. I therefore consider that additional panel members should not be appointed at this stage.*²⁵⁰

However, on 10 May 2018, the Prime Minister advised the chair that she would seek to appoint two panel members for Phase 2 of the Inquiry.²⁵¹ Two panel members were subsequently appointed in May 2019; one is an architect and health and safety practitioner with expertise in fire safety and building

²⁴⁷ London Assembly, *Mayor urges Inquiry to focus on role of race and discrimination in Grenfell Tower tragedy*, 29 July 2020. Available at: <https://www.london.gov.uk/press-releases/mayoral/mayor-urges-inquiry-to-focus-on-role-of-race> (Accessed: 8 August 2020)

²⁴⁸ Grenfell Tower Inquiry, *Expert witnesses*. Available at: <https://www.grenfelltowerinquiry.org.uk/about/expert-witnesses> (Accessed: 8 August 2020)

²⁴⁹ Grenfell Tower Inquiry, Transcript of oral hearing, 7 July 2020. Available at: <https://assets.grenfelltowerinquiry.org.uk/documents/transcript/Transcript%207%20July%202020.pdf> (Accessed: 8 August 2020), p10

²⁵⁰ Government Legal Department, Letter to the Equality and Human Rights Commission, 16 January 2018. Available at: <https://www.equalityhumanrights.com/sites/default/files/following-grenfell-letter-response-from-government-legal-department-16-january-2018.pdf> (Accessed: 8 August 2020)

²⁵¹ Grenfell Tower Inquiry, Letter from the Prime Minister to the Chair, 21 May 2019. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805115/LETTER_FROM_PRIME_MINISTER_TO_SIR_MARTIN_MOORE-BICK_-_GRENFELL_TOWER_INQUIRY_PANEL_MEMBERS.pdf (Accessed: 8 August 2020)

design, and the other is an expert in housing, community participatory design and planning.²⁵² However, the second panel member subsequently withdrew, reportedly due to the scale of the commitment.²⁵³ In December 2019, Theresa May's successor as Prime Minister, Boris Johnson, appointed a replacement, a chartered engineer.²⁵⁴ However, she also subsequently resigned due to a conflict of interest two days before the beginning of Phase 2.²⁵⁵ The following week, victims and survivors again urged the appointment of a replacement panel member whose "expertise, professional and life experiences encompass the issues of race, class, social housing and access to justice".²⁵⁶ The chair is currently supported by just one panel member, the architect and health and safety practitioner. In July 2020, the fact that a further panel member had not yet been appointed was publicly criticised by the Mayor of London.²⁵⁷

It is possible that developments between December 2017 and May 2018 helped to convince the Prime Minister to appoint panel members - after all, if she had always intended to do so for Phase 2, it may have been to her benefit to make this clear. One factor which could have played an important role was a petition started in November 2017 on the Parliament website by victims' families, which called for a diverse decision-making panel to be appointed "with relevant background, expertise, experience, & a real understanding of the issues facing those affected".²⁵⁸ In February 2018, signatures on the petition

²⁵² Gov.uk, *Prime Minister appoints new Grenfell Tower Inquiry panel members*, 30 May 2019. Available at: <https://www.gov.uk/government/news/prime-minister-appoints-new-grenfell-tower-inquiry-panel-members> (Accessed: 8 August 2020)

²⁵³ BBC, *Grenfell Tower Inquiry: Families raise conflict of interest concerns with PM*, 16 January 2020. Available at: <https://www.bbc.com/news/uk-51142585> (Accessed: 8 August 2020)

²⁵⁴ Grenfell Tower Inquiry, *Letter from the Prime Minister to the Chair*, 20 December 2019. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854785/Sir_Martin_Moore-Bick_Ge_001.pdf (Accessed: 8 August 2020)

²⁵⁵ BBC, *Grenfell Tower inquiry member Benita Mehra resigns*, 25 January 2020. Available at: <https://www.bbc.com/news/uk-51252297> (Accessed: 8 August 2020); Construction News, *PM backs search for new Grenfell Inquiry panel member*, 12 February 2020. Available at: <https://www.constructionnews.co.uk/health-and-safety/pm-backs-search-for-new-grenfell-inquiry-panel-member-12-02-2020/> (Accessed: 8 August 2020)

²⁵⁶ Victims and survivors, *Response Submissions on behalf of the clients represented by team 2*, 2 February 2020. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/Appendix%20D.3%20BSR%20Team%202%20written%20submissions%20and%20combined%20bundle%20of%20docs%20referred%20to.pdf> (Accessed: 11 August 2020), p87

²⁵⁷ London Assembly, *Mayor urges Inquiry to focus on role of race and discrimination in Grenfell Tower tragedy*, 29 July 2020. Available at: <https://www.london.gov.uk/press-releases/mayoral/mayor-urges-inquiry-to-focus-on-role-of-race> (Accessed: 8 August 2020)

²⁵⁸ Parliament, Petition (n243)

reached 100,000, after which petitions are considered for debate in Parliament.²⁵⁹ This debate was scheduled for 14 May 2018.²⁶⁰ The Prime Minister announced the appointment of the new panel members four days earlier, which will have changed the nature of that debate significantly.

3.2 Terms of reference

The first core element of the Inquiry that has been influenced by the selection of a chair and panel, is the ToR. In the Prime Minister's statement announcing the appointment of Sir Martin, they stated:

*We must get to the truth about what happened. No stone will be left unturned by this Inquiry, but I have also been clear that we cannot wait for ages to learn the immediate lessons and so I expect the Chair will want to produce an interim report as early as possible.*²⁶¹

On a visit to the Grenfell Tower site on 27 June 2017, the chair was reported in the national press to have said:

*I've been asked to undertake this inquiry on the basis that it would be pretty well limited to the problems surrounding the start of the fire and its rapid development...I'm well aware the residents and the local people want a much broader investigation and I can fully understand why they would want that – whether my inquiry is the right way in which to achieve that I'm more doubtful. [emphasis added]*²⁶²

²⁵⁹ Parliament, *How petitions work*. Available at: <https://petition.parliament.uk/help> (Accessed: 8 August 2020)

²⁶⁰ Parliament, Petition (n243)

²⁶¹ Parliament, *Grenfell Tower Fire: Written statement – HCWS18*, 29 June 2017. Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-06-29/HCWS18> (Accessed: 8 August 2020)

²⁶² The Independent, *Grenfell Tower fire: Judge Sir Martin Moore-Bick 'doubtful' public inquiry will satisfy residents*, 29 June 2017. Available at: <https://www.independent.co.uk/news/uk/home-news/grenfell-tower-fire-judge-sir-martin-moore-bick-public-inquiry-residents-satisfy-victims-families-a7815056.html> (Accessed: 8 August 2020); The Guardian, *Survivors tell Grenfell inquiry chair the remit is too narrow*, 29 June 2017. Available at: <https://www.theguardian.com/uk-news/2017/jun/29/grenfell-inquiry-chairman-martin-moore-bick> (Accessed: 8 August 2020)

At some point, the Prime Minister asked the chair to consult with victims, their families and other interested parties on the scope of the ToR before finalising his recommendations.²⁶³ The Prime Minister twice stated that the intention was that victims and survivors would “help shape” the ToR.²⁶⁴ In June 2017, Justice4Grenfell wrote to the Prime Minister and the chair, arguing that

...the scope of the consultation should cover, not only the terms of reference, but also:

- *The identity of the proposed Chair and Counsel to the inquiry, including the requisite skills and experience; and*
- *The composition of the panel of advisors appointed to assist the inquiry, including the requisite subject matter expertise, skills and experience.*²⁶⁵

This suggestion however was not accepted. When the consultation was launched, the original deadline for responses allowed just nine days,²⁶⁶ but this was extended twice before the consultation closed a month later. It received 554 responses,²⁶⁷ which were treated as private correspondence and so have not all been made public.²⁶⁸ During the consultation, the chair held two meetings with victims and survivors to gather their views.²⁶⁹ One of these was held in the immediate vicinity of Grenfell Tower, and the

²⁶³ Grenfell Tower Inquiry, Letter from the Chair to the Prime Minister, 10 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/Letter_Grenfell_Tower_Inquiry.pdf (Accessed: 8 August 2020)

²⁶⁴ Gov.uk, *Support for victims of the Grenfell Tower disaster*, 16 June 2017. Available at: <https://www.gov.uk/government/news/support-for-victims-of-the-grenfell-tower-disaster> (Accessed: 8 August 2020); Gov.uk, *Statement from the Prime Minister on Grenfell Tower: 17 June 2017*. Available at: <https://www.gov.uk/government/news/grenfell-tower-statement-from-the-prime-minister-17-june-2017> (Accessed: 8 August 2020)

²⁶⁵ Justice4Grenfell, *Copy of the letter to Prime Minister and Home Secretary on the Grenfell Tower Public Inquiry*. Available at: <https://justice4grenfell.org/89/> (Accessed: 8 August 2020)

²⁶⁶ Grenfell Tower Inquiry, *Grenfell Tower Inquiry seeks views on its work*, 5 July 2017. Available at: <https://www.grenfelltowerinquiry.org.uk/news/grenfell-tower-inquiry-seeks-views-its-work> (Accessed: 8 August 2020)

²⁶⁷ Grenfell Tower Inquiry, Press notice: *Inquiry chairman received terms of reference*, 15 August 2017. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/Grenfell-Tower-Inquiry-Press-Notice-15-Aug-2017-1.pdf> (Accessed: 8 August 2020)

²⁶⁸ Grenfell Tower Inquiry, Letter from the Chair to the Prime Minister, 10 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/Letter_Grenfell_Tower_Inquiry.pdf (Accessed: 8 August 2020), p5

²⁶⁹ Grenfell Tower Inquiry, *Consultation meetings on the terms of reference*, 17 July 2017. Available at: www.grenfelltowerinquiry.org.uk/news/consultation-meetings-terms-reference/ (Accessed: 8 August 2020); Institute for Government (n114), p15; Grenfell Tower Inquiry, Letter from the Chair to the Prime Minister, 10 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/Letter_Grenfell_Tower_Inquiry.pdf (Accessed: 8 August 2020), p5

other was a 20 minute journey from it on public transport.²⁷⁰ In its response to the consultation, Justice4Grenfell argued the following:

A fundamental purpose of this Inquiry is to seek to rebuild public confidence regarding the provision of safe social housing nationally and to change attitudes, policies and practices to housing and safety; and to act as a catalyst for improvement in the provision of social housing in the future.

...

*The Inquiry will need to obtain substantial evidence from all branches of Government and from Parliament, regarding their handling of social housing policy, community cohesion...and any other relevant policies...touching on the Grenfell Tower disaster...The Inquiry must uncover the correspondence and documents...that go to the heart of the failed housing and social policies that caused or exacerbated the fire...From Parliament, the Inquiry should receive the reports of previous relevant Select Committees and here evidence from Committee Members and/or Select Committee witnesses as regards...housing policy...*²⁷¹

In a letter to the Prime Minister and the chair, a representative of victims and survivors urged that:

*...the terms of reference are drawn as widely as possible both geographically (this is not just about Grenfell...it is a national failure) and historically (this is not some recent aberration) and factually from general housing policy, gentrification, attitudes to safety and expenditure...*²⁷²

²⁷⁰ Grenfell Tower Inquiry, *Consultation meetings on the terms of reference*, 17 July 2017. Available at: <https://www.grenfelltowerinquiry.org.uk/news/consultation-meetings-terms-reference> (Accessed: 8 August 2020)

²⁷¹ Justice4Grenfell, *Grenfell Tower Fire Public Inquiry Terms of Reference Consultation: Submissions made on behalf of Justice4Grenfell Campaign*, 3 August 2017. Available at: <https://justice4grenfell.org/wp-content/uploads/2017/08/Justice4Grenfell-Proposed-Terms-of-Reference-Grenfell-Inquiry-3.3.17..pdf> (Accessed: 8 August 2020)

²⁷² *R (on the application of Mr Samuel Daniels) v the RT Hon Theresa May, the Prime Minister, v Sir Martin Moore-Bick* [2018] EWHC 1090 (Admin). Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2018/1090.html> (Accessed: 8 August 2020), para 11

On 10 August 2017, the chair wrote to the Prime Minister with a summary of the responses and enclosing his proposed ToR. The summary stated the following:

*Approximately 18% of respondents said the terms of reference should include housing policy, both nationally and locally and approximately 10% said that it should cover wider social policy, including racial and ethnic discrimination in the provision of services. [emphasis added]*²⁷³

The chair advised the Prime Minister as follows:

As a result of the consultation, it has become clear that many of those who have been affected by the fire and some others feel strongly that the scope of the Inquiry should be very broad and should include an examination of social housing policy and all aspects of the relationship between the residents of the Lancaster West estate on the one hand and the local authority and the tenant management organisation on the other.

...

I can well understand why local people consider that these are important questions which require urgent examination. I share their concerns, but on careful reflection I have come to the conclusion that the Inquiry you have asked me to conduct is not the best way of satisfying their wishes for two reasons:

(i) First, there is an obvious need for my Inquiry to complete its work as quickly as possible in order to identify defects in the design, construction (including refurbishment) and management of the building that may exist elsewhere and put at risk others who live and work in similar high-rise structures. To give the Inquiry Terms of Reference which

²⁷³ Grenfell Tower Inquiry, Letter from the Chair to the Prime Minister, 10 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/Letter_Grenfell_Tower_Inquiry.pdf (Accessed: 8 August 2020), pp5-6

would cover all the matters requested by local residents and others would inevitably add significantly to the length of time needed to complete its work.

(ii) Secondly, the inclusion of such broad questions within the scope of the Inquiry would raise questions of a social, economic, and political nature which in my view are not suitable for a judge-led inquiry.

...

*I therefore recommend that the Inquiry's Terms of Reference should not extend to the broader questions to which I have referred. [emphasis added]*²⁷⁴

On 15 August 2017, Justice4Grenfell issued the following statement:

We...remain of the opinion that the remit does not go far enough...

We believe that from the start of the process of announcing and setting up the terms of reference of the Inquiry, that the greatest consideration should have been given to the broadest remit possible to ensure all aspects of this avoidable disaster could be examined and lessons learnt to ensure such a disaster never occurs again.

...

*It is disappointing that the question of social housing especially social cleansing/gentrification will not be addressed in the Inquiry as this remains a critical issue not just for the community of North Kensington but across the country and goes to the heart of a changing ideological approach to social housing and the pursuit of profit rather than provision of safe, affordable, appropriate and adequate housing...*²⁷⁵

In her response to the Chair, the Prime Minister accepted the draft ToR and noted the following:

²⁷⁴ Grenfell Tower Inquiry, Letter from the Chair to the Prime Minister, 10 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/Letter_Grenfell_Tower_Inquiry.pdf (Accessed: 8 August 2020)

²⁷⁵ Justice4Grenfell, *J4G's response to the terms of reference publication*. Available at: <https://justice4grenfell.org/2127/> (Accessed: 8 August 2020)

*The terms of reference do not address some of the broader social issues that some people have called for the Inquiry to consider. I understand your concern about the suitability of considering such broader issues in a judge-led Inquiry and the urgent need for the Inquiry to complete its work as soon as possible, so that essential lessons can be learnt. This mitigated against very broad terms of reference and I accept your reasons for focusing the Inquiry in the way you have.*²⁷⁶

At the opening hearing in September 2017, the chair indicated that the ToR were “not intended to be exhaustive...I shall not be deflected from pursuing lines of enquiry which may lead to information of value.”²⁷⁷ When oral hearings began in June 2018, counsel for victims and survivors made more developed submissions on the need to broaden the ToR:

We submit that what occurred at Grenfell Tower may be explained as a product of institutional racism, and we consider it right and proper that this should be investigated.

...

*...what may have occurred and which needs consideration by this inquiry is whether...as a result of the unwitting actions and conduct of the individuals that made up RBKC [Royal Borough of Kensington and Chelsea] and TMO [Tenant Management Organisation], there was a racist outcome. [emphasis added]*²⁷⁸

He therefore invited the chair to recommend that the ToR be amended:

²⁷⁶ Grenfell Tower Inquiry, Letter from the Prime Minister to the Chair, 15 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/MMB_Letter_-_Grenfell.pdf (Accessed: 8 August 2020)

²⁷⁷ Grenfell Tower Inquiry, Transcript of oral hearing, 14 September 2017. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/Transcript-of-Inquiry-opening-14-September-2017.pdf> (Accessed: 8 August 2020), p7

²⁷⁸ Grenfell Tower Inquiry, Transcript of oral hearing, 5 June 2018. Available at: <https://assets.grenfelltowerinquiry.org.uk/documents/transcript/Transcript-of-opening-statements-5-June.pdf> (Accessed: 8 August 2020), pp137-138

*To examine whether race, religion or social class played any part in the events surrounding the fire...We hope you will agree that this is a grave issue, and we consider...it is a perfectly proper one to be examined by a judge-led inquiry.*²⁷⁹

Another counsel for victims and survivors submitted:

*We agree...that the terms of the inquiry should be broadened to deal with...To what extent did the fact that the residents were perceived to be predominantly poorer members of the borough contribute to this incident? That has to be looked at, Sir. And, Sir, you cannot ignore race.*²⁸⁰

In November 2018, the EHRC submitted that, in line with the State's obligations under international human rights law, "the Grenfell inquiry must examine whether there were any policies and practices in place that disadvantaged any protected group."²⁸¹ However, there has been no subsequent broadening of the ToR.

The representations made by victims and survivors to the chair and the Prime Minister, which have so far been refused, can usefully be summarised as requests that the ToR be broadened to consider issues of inequality and discrimination in relation to factors such as race, ethnicity, poverty and class. This would enable the Inquiry to examine whether victims and survivors are right to feel "grave foreboding...that the race, religion or social class of the residents may have determined their destiny".²⁸² In order to analyse the consequences of this refusal, we need first to outline the relevant provisions of international human

²⁷⁹ Ibid, p133

²⁸⁰ Grenfell Tower Inquiry, Transcript of oral hearing, 6 June 2018. Available at: <https://assets.grenfelltowerinquiry.org.uk/documents/transcript/Transcript-of-opening-statements-6-June.pdf> (Accessed: 8 August 2020), pp33-34

²⁸¹ Equality and Human Rights Commission (November 2018) *Following Grenfell: equality and non-discrimination*. Available at: <https://www.equalityhumanrights.com/en/publication-download/following-grenfell-equality-and-non-discrimination> (Accessed: 8 August 2020), p7

²⁸² Grenfell Tower Inquiry, Transcript of oral hearing, 5 June 2018. Available at: <https://assets.grenfelltowerinquiry.org.uk/documents/transcript/Transcript-of-opening-statements-5-June.pdf> (Accessed: 8 August 2020)

rights law that are binding on the UK, and then consider both the experiences of victims and survivors, and the broader national picture.²⁸³

3.2.1 International human rights law

The fire and the circumstances around it demonstrate potential violations of a number of human rights, including the right to life, the right to adequate and safe housing, and the right to equality and non-discrimination.²⁸⁴

3.2.1.1 The right to life

The ECHR has been incorporated into domestic law by the Human Rights Act 1998, under which public authorities such as inquiries²⁸⁵ are obligated to act in a manner compatible with 16 of the fundamental human rights laid out in the Convention.²⁸⁶ These rights, which have been interpreted as imposing positive and negative obligations on Member States,²⁸⁷ include Article 2 (right to life).²⁸⁸ The substantive positive obligations under Article 2 are to prohibit the intentional deprivation of life and, where a state knows, or ought to know, of a real and immediate threat to life, to take adequate steps to protect it.²⁸⁹ If one of the State's substantive obligations has, or may have been breached, it is under a positive obligation to hold an effective investigation, which must be independent, effective, prompt and

²⁸³ Justice4Grenfell, *J4G's perspectives on the start of Phase 2 of the Grenfell Inquiry*. Available at: <https://justice4grenfell.org/2421/> (Accessed: 8 August 2020)

²⁸⁴ Sánchez, Juan Carlos Benito (2019) Towering Grenfell: Reflections around Socioeconomic Disadvantage in Antidiscrimination Law, *Queen Mary Human Rights Review*, 5(2), p2

²⁸⁵ Beer (n11), p281

²⁸⁶ Sections 1 & 6(1) of the Human Rights Act 1998, c. 42. Available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents> (Accessed: 8 August 2020); British Institute of Human Rights (undated), *The Human Rights Act*. Available at: <https://www.bihr.org.uk/thehumanrightsact> (Accessed: 8 August 2020)

²⁸⁷ Bright & Maxwell (n4), p13

²⁸⁸ Section 1(1)(a) of the Human Rights Act 1998 (n286)

²⁸⁹ *Osman v UK* (1998) 5 BHRC 293. Available at: <http://www.bailii.org/eu/cases/ECHR/1998/101.html> (Accessed: 8 August 2020); *Öneryildiz v Turkey* [2004] ECHR 48939/99. Available at: <https://www.bailii.org/eu/cases/ECHR/2004/657.html> (Accessed: 8 August 2020); *Budayeva v Russia* (App no 15339/02), 20 March 2008. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-85436%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-85436%22]}) (Accessed: 8 August 2020)

transparent.²⁹⁰ Inquiries are a useful tool by which the State can discharge this obligation, either on their own or with other investigative mechanisms.²⁹¹

Commentators have argued strongly that, in relation to the Grenfell Tower fire, the state's decision-making and lack of action contributed to the deaths, and that the state may have continued to be in breach of its positive obligation to take adequate steps to protect life after the fire due to the number of other buildings in the country that have also been fitted with flammable cladding (see Section 3.2.3.4).²⁹² The extent to which this will be borne out in the evidence heard during Phase 2 of the Inquiry remains to be seen. For the purposes of this thesis, it serves simply to note that the chair has accepted that Article 2 ECHR is engaged by the Inquiry, and that the state's investigative obligations under Article 2 are intended to be "primarily discharged" by it.²⁹³

3.2.1.2 The right to adequate housing

Adequate housing provides a place of safety, security and privacy. It allows people to collect and protect possessions, shelters them from the elements, fosters freedom of expression, and plays an important role in the development of identity and community.²⁹⁴ Insecurity of housing therefore threatens the enjoyment of some of the most fundamental principles of human rights.²⁹⁵ The right to adequate housing is protected under Article 25 of the Universal Declaration of Human Rights (1948) and Article 11 of the

²⁹⁰ *Assenov v Bulgaria* (90/1997/874/1086). Available at: <http://www.worldlii.org/eu/cases/ECHR/1998/98.html> (Accessed: 11 August 2020)

²⁹¹ Beer (n11), p3

²⁹² Equality and Human Rights Commission (January 2019) *Submissions following Phase 1 of the Inquiry*. Available at: <https://www.equalityhumanrights.com/en/publication-download/summary-submissions-following-phase-1-grenfell-tower-inquiry> (Accessed: 8 August 2020), pp6-8; Nadj, Daniela (2019) Deregulation, the Absence of the Law and the Grenfell Tower Fire, *Queen Mary Human Rights Review*, 5(2), pp2-3; Bright & Maxwell (n4), p14; Hohmann, Jessie (2019) The Elements of Adequate Housing: Grenfell as Violation, *Queen Mary Human Rights Review*, 5(2), p8

²⁹³ Grenfell Tower Inquiry, Ruling on applications by certain core participants for funding to cover the cost of translating the Phase 1 report, 14 May 2020. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/2020.05.14%20Ruling%20-%20cost%20of%20translating%20the%20Phase%201%20Report.pdf> (Accessed: 8 August 2020), p4

²⁹⁴ Hohmann (n292), p2

²⁹⁵ UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 21, The Human Right to Adequate Housing*, November 2009, Fact Sheet No. 21/Rev.1. Available at: <https://www.refworld.org/docid/479477400.html> (Accessed: 8 August 2020), p9

ICESCR²⁹⁶ as part of an adequate standard of living, as well as under Article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965) (CERD),²⁹⁷ Article 43(1)(d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Article 21 of the Convention Relating to the Status of Refugees (1951), and Article 28(1) of the Convention on the Rights of Persons with Disabilities (2008) (CRPD) - all of which the UK has ratified.

The United Nations Committee on Economic, Social and Cultural Rights has outlined the elements of the right to adequate housing, which include: immediate realisation of the right to equal and non-discriminatory access to adequate housing for all people, irrespective of income;²⁹⁸ consideration of the specific needs of disadvantaged groups, such as accessibility for elderly or physically disabled people;²⁹⁹ the right to freedom from ‘address discrimination’; and the enjoyment of adequate services and resources such as physical safety and protection from health and structural hazards (‘habitability’).³⁰⁰ In order to protect this right, the state may be obligated to provide assistance, including alternative, housing to people affected by disasters (such as a catastrophic fire), and particularly to the most vulnerable groups.³⁰¹

As part of the UK’s obligation to fulfil the right to adequate housing, it is obligated to adopt a national housing policy which focuses on the needs of disadvantaged groups, and to monitor the results of its implementation.³⁰² This policy must not be directly or indirectly discriminatory.³⁰³ The UK must also provide legal remedies for complaints about discrimination or inadequate housing, in order to ensure

²⁹⁶ See UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23. Available at: <https://www.refworld.org/docid/47a7079a1.html> (accessed: 8 August 2020)

²⁹⁷ See United Nations Committee on the Elimination of Racial Discrimination, General recommendation No. 30 (2004), *Discrimination against non-citizens*, CERD/C/64/Misc.11/rev.3. Available at: <http://www2.ohchr.org/english/bodies/cerd/docs/cerd-gc30.doc> (Accessed: 8 August 2020)

²⁹⁸ See Article 2(2) of the ICESCR; UN Committee on Economic, Social and Cultural Rights (n296), para 7.

²⁹⁹ UN Committee on Economic, Social and Cultural Rights (n296), para 8(e)

³⁰⁰ UN Office of the High Commissioner for Human Rights (n295), p6; UN Committee on Economic, Social and Cultural Rights (n296), para 8

³⁰¹ UN Office of the High Commissioner for Human Rights (n295), p6

³⁰² Ibid, pp33-34

³⁰³ UN Committee on Economic, Social and Cultural Rights (n296), para 11; UN Office of the High Commissioner for Human Rights (n295), p10

access to justice.³⁰⁴ It must prevent third parties (such as an arms-length Tenant Management Association (TMO), or businesses involved in the building and renovations of a residential building) from interfering with this right.³⁰⁵ TMOs are also under their own responsibility to respect the right, including by maintaining standards of habitability and avoiding discrimination.³⁰⁶

3.2.1.3 Equality and discrimination

The principles of equality and non-discrimination are recognised as fundamental to the UK's constitutional order,³⁰⁷ and are protected by specialised domestic legislation³⁰⁸ and Article 14 of the ECHR, as incorporated by Section 1(1)(a) of the Human Rights Act 1998. Under Article 14, the rights and freedoms set out in the ECHR must be secured “without discrimination on any ground such as race, colour, language, religion...national or social origin, property, birth or other characteristics.”³⁰⁹ Provisions prohibiting discrimination in other treaties ratified by the UK include Article 26 of the International Covenant on Civil and Political Rights (1966) (ICCPR), Article 2(2) of the ICESCR, Article 2 of CERD, Article 2 of the Convention on the Elimination of all Forms of Discrimination Against Women (1979) (CEDAW), and Article 5 of the CRPD.

³⁰⁴ UN Committee on Economic, Social and Cultural Rights (n296), para 17; Equality and Human Rights Commission, (September 2018) *Following Grenfell: the right to adequate and safe housing*. Available at: https://www.equalityhumanrights.com/sites/default/files/following-grenfell-briefing-right-to-adequate-safe-housing_0.pdf (Accessed: 11 August 2020), p5

³⁰⁵ UN Office of the High Commissioner for Human Rights (n295), pp33-34; Hohmann (n292), p8; UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, 10 August 2017, E/C.12/GC/24. Available at: <https://www.refworld.org/docid/5beaecba4.html> (Accessed: 8 August 2020); See Pillar I of the UN Office of the High Commissioner for Human Rights (OHCHR), *United Nations Guiding Principles on Business and Human rights*. Available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed: 8 August 2020)

³⁰⁶ UN Office of the High Commissioner for Human Rights (n295), p37; Equality and Human Rights Commission, (September 2018) *Following Grenfell: the right to adequate and safe housing*. Available at: https://www.equalityhumanrights.com/sites/default/files/following-grenfell-briefing-right-to-adequate-safe-housing_0.pdf (Accessed: 11 August 2020), pp5-6

³⁰⁷ O’Cinneide (n224), p1

³⁰⁸ Equality Act 2010, c. 15. Available at: <https://www.legislation.gov.uk/ukpga/2010/15/contents> (Accessed: 8 August 2020)

³⁰⁹ Article 14 the *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <https://www.refworld.org/docid/3ae6b3b04.html> (Accessed: 11 August 2020)

These instruments prohibit both direct and indirect discrimination³¹⁰ - where a person is treated differently than another because they have a protected characteristic such as race, and where a policy or practice is applied to all but works to the particular disadvantage of some because of a protected characteristic. These instruments also impose both positive and negative obligations on the State, including its local authorities. Under the negative duty, they must not discriminate against a person on a prohibited ground, and under the positive duty, the State must review its laws and policies against the requirements of equality and non-discrimination, and must accommodate the particular needs of people with protected characteristics.³¹¹

3.2.1.4 The Inquiry's human rights blindness

After the publication of the Phase 1 report, Aoife Nolan, Professor of International Human Rights Law at the University of Nottingham, commented in the London Review of Books on the reports “human rights blindness”. They pointed out that there is no reference to human rights in the ToR, and that applications from both the EHRC and the Special Rapporteur on adequate housing for core participant status were denied: “Human rights...are effectively ignored in Moore-Bick’s report.”³¹² For this thesis, searches for the words “equality” and “discrimination” in the report returned no results, as did searches for references to the right to housing, or indeed the right to life. The term “human rights” appears only once in a passing reference to the Human Rights Act 1998.³¹³ This lack of a human rights approach by the Inquiry is conspicuous when considered against the *prima facie* human rights violations experienced both by victims and survivors in relation to the Grenfell Tower fire, and more broadly by similar communities across the country. This chapter will now examine some of the evidence available for the violations highlighted by victims and survivors, broken down somewhat artificially, for the purposes of this thesis, into the effects of poverty and class, and race and ethnicity.

³¹⁰ Equality and Human Rights Commission (n281)), p3

³¹¹ Ibid, p4

³¹² Nolan, Aoife (2019) Human Rights and the Grenfell Tower Inquiry, *London Review of Books*, 4 November 2019. Available at: <https://www.lrb.co.uk/blog/2019/november/human-rights-and-the-grenfell-tower-inquiry> (Accessed: 2 August 2020)

³¹³ Grenfell Tower Inquiry (n228)

3.2.2 The experiences of victims and survivors

Numerous representations have been made to the inquiry about the effect of discrimination on the lives of victims and survivors based on race, ethnicity, poverty and class.

3.2.2.1 Poverty and class

Grenfell Tower is located on the Lancaster West Estate, a social housing complex of about 1000 homes³¹⁴ in the Royal Borough of Kensington and Chelsea (RBKC). Most of the flats in the tower were owned by the RBKC.³¹⁵ With ‘royal status’ as the birthplace of Queen Victoria, in the most recent census it had the biggest proportion of high-earners in the country.³¹⁶ At the time of the fire, the RBKC enjoyed a budget surplus of £274m,³¹⁷ and was operating a tax rebate scheme that benefited its wealthiest residents.³¹⁸ However, the Lancaster West Estate was mostly populated by low and moderate-income, working class residents.³¹⁹

This division is symptomatic of broad economic inequality across the borough. In 2017, RBKC contained the then joint poorest ward (area within a local authority) in London, with 51% of its residents living in poverty, whereas in another ward in the borough this number was only 6%.³²⁰ While one ward was judged to be in the 4% most deprived in England, another was the least deprived.³²¹ Importantly, in 2015 the area around Grenfell Tower was among the top 10% most deprived in England.³²² These

³¹⁴ Grenfell Action Group, *About*. Available at: <https://grenfellactiongroup.wordpress.com/about/> (Accessed: 8 August 2020)

³¹⁵ Sánchez (n284), p1

³¹⁶ Grenfell Tower Inquiry, Transcript of oral hearing, 5 June 2018. Available at: <https://assets.grenfelltowerinquiry.org.uk/documents/transcript/Transcript-of-opening-statements-5-June.pdf> (Accessed: 8 August 2020), p136

³¹⁷ The Guardian, *Kensington and Chelsea Council Has £274m in Reserves*, 19 June 2017. Available at: <https://www.theguardian.com/uk-news/2017/jun/19/kensington-chelsea-council-has-274m-in-reserves-grenfell-tower-budget-surplus> (Accessed: 8 August 2020)

³¹⁸ Cooper, Vickie & Whyte, David (2018), Grenfell, Austerity and Institutional Violence, *Sociological Research Online* (Early Access), p3

³¹⁹ Sánchez (n284), p1; Nadj (n292), p1

³²⁰ Coad, Emma Dent, MP (undated) *After Grenfell: Housing and inequality in Kensington and Chelsea: “The most unequal borough in Britain”*. Available at: <https://justice4grenfell.org/wp-content/uploads/2017/11/364307729-After-Grenfell.pdf> (Accessed: 8 August 2020), pp8 &18

³²¹ Ibid, p13

³²² Ramage, Sally (2017), Grenfell Tower, *Criminal Lawyer*, 234

divisions are also starkly manifested in the borough's housing stock. Although, in 2017, 68% of children in one ward lived in overcrowded housing,³²³ at the same time the borough had 1200 long term empty homes, and 9300 second homes, with social housing making up just 13% of net residential completions between 2015 and 2016.³²⁴ As one academic has noted:

*Inequality was manifested in the cramped, run-down and ultimately life endangering living conditions of the tower's inhabitants, especially when compared to the housing conditions enjoyed by many living in their near proximity.*³²⁵

There was clearly a striking disparity then between the economic means and housing of those directly affected by the fire, and many of those living in the surrounding area. One resident has said of the local authority:

*It was difficult to get them to listen to us. In some of the estates down from the tower, you could cross the road and that would be the difference between a social housing home and a house that cost £5m. The council had an attitude problem towards us. To them we were just people living in social housing...They felt our voices didn't matter.*³²⁶

In fact, the former Member of Parliament (MP) in whose constituency the tower sat suggested that the flammable external cladding installed on Grenfell Tower, which was central to the fire's rapid spread, was fitted "to hide the borough's poorer residents within"³²⁷ and to stop the view of the tower negatively affecting the prices of higher value properties nearby.³²⁸ She continued:

³²³ Coad (n320), pp8 & 18

³²⁴ Ibid, p8

³²⁵ O'Cinneide (n224), p1

³²⁶ Big Issue, *Tiago Alves was home on the 13th floor when Grenfell Tower caught fire*, 14 June 2018. Available at: <https://www.bigissue.com/latest/social-activism/tiago-alves-was-home-on-the-13th-floor-when-grenfell-tower-caught-fire/> (Accessed: 8 August 2020)

³²⁷ Coad (n320), pp8 & 18

³²⁸ Ramage (n322), p1

Kensington and Chelsea...is a place where inequality has become a gross spectacle.

Where childhood poverty, overcrowding and homelessness live cheek by jowl [sic] with opulent second homes, palatial apartments for the mega rich and vast outflows of rent to corporate landlords.

...

*The proximity of huge wealth attracted by an overheated international property market unencumbered by taxes, alongside poverty so extreme that children and older people are suffering malnutrition is a scandal that brings shame on our society in 21st century London.*³²⁹

3.2.2.2 Race and ethnicity

The ethnic diversity of those who died is extraordinary. Although in 2017, 37% of people in the borough were from BAME communities,³³⁰ of the 67 victims who lived in the tower, 85% were from BAME communities from the following countries (or of their heritage): Afghanistan, Egypt, Iran, Lebanon, Morocco, Sudan, Syria, Eritrea, Ethiopia, Gambia, Nigeria, Sierra Leone, Bangladesh, Dominica, Trinidad, the Philippines and Colombia.³³¹ Among them were people who had come to the UK as refugees.³³² According to one person amongst the victims and survivors: "It was a very diverse place and I definitely feel like race and religion were a factor in people being housed there."³³³

³²⁹ Coad (n320), pp6 & 88

³³⁰ Office of National Statistics (undated), *Ethnic Groups by Borough*. Available at: <https://data.london.gov.uk/dataset/ethnic-groups-borough> (Accessed: 2 August 2020)

³³¹ Victims and survivors, *Submissions on behalf of the bereaved, survivors and residents*, 3 July 2020. Available at: <https://assets.grenfelltowerinquiry.org.uk/Leslie%20Thomas%20QC%20submission%207%20July%202020.pdf> (Accessed: 8 August 2020)

³³² Grenfell Tower Inquiry, Transcript of oral hearing, 24 May 2018. Available at: <https://assets.grenfelltowerinquiry.org.uk/documents/transcript/Transcript-of-Commemoration-Hearing-24-May-2018.pdf> (Accessed: 8 August 2020), p38; Grenfell Tower Inquiry, Transcript of oral hearing, 29 May 2018. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/grenfell290518_0.pdf (Accessed: 8 August 2020), p58

³³³ Grenfell Tower Inquiry, Transcript of oral hearing, 5 June 2018. Available at: <https://assets.grenfelltowerinquiry.org.uk/documents/transcript/Transcript-of-opening-statements-5-June.pdf> (Accessed: 8 August 2020), p136

In June and July 2020, relatives of victims called on the Inquiry to investigate the role of racism in the tragedy,³³⁴ submitting that the fire was a *prima facie* case of indirect racial discrimination,³³⁵ and pointing to jurisprudence of the ECtHR imposing a duty on States carrying out an Article 2 investigation to also investigate any racist motives for the killing.³³⁶ The fact that BAME people were so overrepresented among the victims of the fire was sufficient, they said, to trigger the State's duty under Article 2, read with Article 14 (prohibition of discrimination), "to investigate the possible racial angle in these deaths".³³⁷ They have called on the Inquiry to institute a new module in its work devoted to the examination of race and class.³³⁸ The Mayor of London has also recently called for the Inquiry to address issues of race and social housing.³³⁹

3.2.2.3. Complaints before the fire

Part of the feeling amongst victims and survivors that discrimination played a key role in the lead up to the fire was the lack of action taken by the authorities in response to their many attempts to raise concerns about the safety of the building. The founder of a trust which provides support for the victims and survivors has suggested that "[t]he fact residents were from immigrant or BAME backgrounds means they weren't listened to and they were treated unfavourably."³⁴⁰ Since 2013, residents had

³³⁴ Justice4Grenfell, *Grenfell Tower relatives call for inquiry to investigate role of racism in fire tragedy*. Available at: <https://justice4grenfell.org/2676/> (Accessed: 8 August 2020)

³³⁵ Victims and survivors (n331), p5

³³⁶ *Ibid*, p4; see *Nachova v Bulgaria* (2006) 42 EHRR 43. Available at: <https://www.bailii.org/eu/cases/ECHR/2005/465.html> (Accessed: 11 August 2020); *Angelova and Iliev v Bulgaria* (2008) 47 EHRR 7. Available at: <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2255523/00%22%2C%22itemid%22%3A%22001-81906%22%7D> (Accessed: 11 August 2020); *Secic v Croatia* (application no 40116/02, 31 May 2007. Available at: <https://www.bailii.org/eu/cases/ECHR/2007/1159.html> (Accessed: 11 August 2020); and *Fedorchenko and Lozenko v Ukraine* (application no 387/03, 20 September 2012). Available at: <https://www.refworld.org/cases,ECHR,512633b22.html> (Accessed: 11 August 2020)

³³⁷ Victims and survivors (n331), p9

³³⁸ The Guardian, *Grenfell families want inquiry to look at role of 'race and class' in tragedy*, 26 July 2020. Available at: <https://www.theguardian.com/uk-news/2020/jul/26/grenfell-families-want-inquiry-to-look-at-role-of-race-and-class-in-tragedy> (Accessed: 8 August 2020)

³³⁹ London Assembly, *Mayor urges Inquiry to focus on role of race and discrimination in Grenfell Tower tragedy*, 29 July 2020. Available at: <https://www.london.gov.uk/press-releases/mayoral/mayor-urges-inquiry-to-focus-on-role-of-race> (Accessed: 8 August 2020)

³⁴⁰ The Guardian, *Fight for Grenfell inquiry to look at racial stereotyping goes on*, 14 June 2020. Available at: <https://www.theguardian.com/uk-news/2020/jun/14/calls-grow-for-grenfell-inquiry-to-look-at-role-of-institutional-racism> (Accessed: 8 August 2020)

complained about blocked emergency access, unchecked firefighting equipment, electrical power surges, faulty wiring, exposed gas pipes, the lack of an evacuation procedure or adequate escape routes, and the absence of a building-wide fire alarm or sprinkler system.³⁴¹ In one horrific event that preceded the fire by almost a decade, a ten-year old boy died after falling from the 18th floor. He had been waving to friends through a window that was supposed to only open by a few inches, but the safety feature had broken, and he fell through. A neighbour reported that his mother had asked the TMO two years previously to repair the window.³⁴² Six months before the fire, a group of residents wrote on an online blog:

*It is a truly terrifying thought but the Grenfell Action Group firmly believe that only a catastrophic event will expose the ineptitude and incompetence of our landlord, the KCTMO, and bring an end to the dangerous living conditions and neglect of health and safety legislation that they inflict upon their tenants and leaseholders.*³⁴³

In his Phase 1 report, the chair noted the view of the local community that the lack of interest in their complaints “reflect what is said to be a general lack of concern on the part of the authorities for the residents of the tower and the wider community”.³⁴⁴ In December 2017, he indicated that he would appoint an expert witness to address the question of how these kinds of complaints ought to have been handled.³⁴⁵ However, at the time of writing in August 2020, no such expert has yet been appointed.³⁴⁶

3.2.2.4 The national picture

³⁴¹ Sánchez (n284), p2; Hohmann (n292), p7; Big Issue 2018: Big Issue, *Tiago Alves was home on the 13th floor when Grenfell Tower caught fire*, 14 June 2018. Available at: <https://www.bigissue.com/latest/social-activism/tiago-alves-was-home-on-the-13th-floor-when-grenfell-tower-caught-fire/> (Accessed: 8 August 2020)

³⁴² Evening Standard, *Boy of 10 falls to his death from 18th floor*, 5 June 2008. Available at: <https://www.standard.co.uk/news/boy-of-10-falls-to-his-death-from-18th-floor-6873574.html> (Accessed: 8 August 2020)

³⁴³ Grenfell Action Group, *KCTMO – Playing with fire!*, 20 November 2016. Available at: <https://grenfellaactiongroup.wordpress.com/2016/11/20/kctmo-playing-with-fire/> (Accessed: 8 August 2020)

³⁴⁴ Grenfell Tower Inquiry, *Phase 1 Report*, October 2019, HC 49, Part IV, Chapter 34.13. Available at: <https://www.grenfelltowerinquiry.org.uk/phase-1-report> (Accessed 8 August 2020),

³⁴⁵ Grenfell Tower Inquiry, Chairman’s response to submissions made on 11 – 12 December 2017. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/Chairmans-Response-20.12.17.pdf> (Accessed: 8 August 2020). p3

³⁴⁶ Victims and survivors (n331), p14

Many of the issues with housing experienced by the victims and survivors were themselves symptomatic of broader, national trends.³⁴⁷ According to one academic:

*...the fire was fed by the broken housing system...the racism that perpetuates inferior infrastructure and safety standards for people of colour, and the erasure of the voices and interests of working class and poor people from the concerns of the state.*³⁴⁸

The term ‘social housing’ refers to homes rented from not-for-profit housing associations or local councils, which are designed to be more affordable than those rented from private landlords (on average they are 50% cheaper³⁴⁹), and to provide more secure, longer-term tenancies.³⁵⁰ However, the UK faces a chronic lack of affordable social housing. Although 1.2 million people were waiting for social housing to become available in 2017, only 5,380 had been built since the previous year.³⁵¹ This crisis has been traced back to a ‘right to buy’ programme in the 1980s, which allowed residents to buy their home, and is now seen as part of a deliberate destruction of the social housing stock by a government that wanted to lower the prevalence of social housing.³⁵²

One result of this state antipathy towards social housing has been that estates like Lancaster West have been treated as a blight, suitable only for the poorest and neediest of people. Residents have been publicly stigmatised as undeserving, which in turn has caused their needs to be neglected and enabled further cost-cutting. According to one academic, “[r]esidents of social housing are said to be ‘populations marked for disposability’”.³⁵³

³⁴⁷ Nadj (n292), p1

³⁴⁸ Madden, David, ‘Editorial: A Catastrophic Event’ (2017) 21 City 1, p3, cited in Sánchez (n284), p2

³⁴⁹ BBC, *Housing crisis affects estimated 8.4 million in England – research*, 23 September 2019. Available at: <https://www.bbc.com/news/uk-49787913> (Accessed: 8 August 2020)

³⁵⁰ Shelter (2020) *What is social housing*, Available at:

https://england.shelter.org.uk/support_us/campaigns/what_is_social_housing (Accessed: 8 August 2020)

³⁵¹ Shelter (2019) *Building more affordable homes*, Available at:

https://england.shelter.org.uk/_data/assets/pdf_file/0011/1597709/2018_10_19_Shelter_briefing_-_Building_more_affordable_homes_.pdf (Accessed: 8 August 2020)

³⁵² Radical Housing Network, Hudson, Becka & Tucker, Pilgrim, ‘Struggles for Social Housing Justice’, After Grenfell (2019) 125; Nadj (n292), pp3-4

³⁵³ Ibid, p15

These trends have had a disproportionate impact on working class³⁵⁴ and BAME communities. Whereas between 2016 and 2018, 17% of households in England lived in rented social housing, the figure for Black African households was 44%, for Black Caribbean households 40%, and for Arab households 32%.³⁵⁵ Although between 2017 and 2018, just 14% of the general population lived in high rise, rented social housing, the figure for BAME communities was 40%.³⁵⁶ According to two academics, the issues faced by BAME residents of Grenfell Tower were part of “ongoing colonial practices of state-sanctioned racial hierarchy and segregation in Britain”,³⁵⁷ with the allocation of social housing based on a “racialized distinction between deserving and undeserving”, leading to gentrification and social cleansing.³⁵⁸ This has left BAME communities disproportionately affected by the depression, anxiety and suicidal ideations documented amongst residents of housing with flammable cladding since the fire.³⁵⁹ One counsel for victims and survivors submitted that the Inquiry:

*...must look not just at direct racially discriminatory motivations, but also at the wider context – the residualised role of social housing in the UK today as housing for the poor, in the context of the erosion of social housing stock since 1980 – and how this affects the way that social housing is treated by local authorities and central government.*³⁶⁰

The failures to address the complaints raised by residents of Grenfell Tower can also be linked to drastic national reductions in the availability of legal aid for housing cases from 2012, making legal aid only available for matters including housing law under “exceptional circumstances”.³⁶¹ As a result of these changes, the United Nations Special Rapporteur on extreme poverty and human rights observed in 2019

³⁵⁴ Ibid, p15

³⁵⁵ Victims and survivors (n331), p3

³⁵⁶ Ibid

³⁵⁷ El-Enany, Nadine (2017), *The Colonial Logic of Grenfell*: Available at: <https://www.versobooks.com/blogs/3306-the-colonial-logic-of-grenfell> (Accessed: 2 August 2020)

³⁵⁸ Shilliam, 2018: 166, quoted in Tuitt (n3), p120

³⁵⁹ Inside Housing, *Revealed: the mental health trauma of residents in private blocks with dangerous cladding*, 26 April 2019. Available at: <https://www.insidehousing.co.uk/insight/insight/revealed-the-mental-health-trauma-of-residents-in-private-blocks-with-dangerous-cladding-61169> (Accessed: 8 August 2020); Inside Housing, *The cladding scandal is everybody’s fight*, 10 May 2019. Available at: <https://www.insidehousing.co.uk/comment/comment/the-cladding-scandal-is-everybodys-fight-61326> (Accessed: 8 August 2020);

³⁶⁰ Victims and survivors (n331)

³⁶¹ Legal Voice, *Were Grenfell Tower residents denied access to justice?*, 8 August 2017. Available at: <http://legalvoice.org.uk/grenfell-tower-residents-denied-access-justice/> (Accessed: 8 August 2020)

that “many poor people [in the UK] are unable to effectively claim and enforce their rights”.³⁶² In fact, it has been documented that residents of Grenfell Tower were twice frustrated in their attempts to raise complaints about the unsafe cladding and a lack of fire extinguishers specifically due to the refusal of legal aid for these matters.³⁶³

These cuts to legal aid have been part of a broader national policy of austerity in public spending since 2010, under which investment in social housing has declined by 60%, and fire safety checks in high rise buildings reduced by 25%.³⁶⁴ A combination of national and local policies of austerity have led to what has been termed ‘social cleansing’, with the lives of working class communities made so difficult that they have been forced to move to other areas,³⁶⁵ away from their support networks of family and friends. As part of the cuts, and despite its own budgetary surplus, the RBKC had reduced its spending on housing by 76%.³⁶⁶ Crucially, it was reportedly a desire to reduce costs that led to the disastrous installation of cheaper, combustible cladding to Grenfell Tower, in place of fire-safe cladding.³⁶⁷

The problem of flammable cladding is also by no means confined to Grenfell Tower. As of writing, the Government had identified 154 high-rise, social sector residential buildings with unsafe cladding.³⁶⁸ Accordingly, it has been suggested that:

*...the resulting enquiries, media and public scrutiny [after the fire] have revealed that many thousands of households in the UK are not enjoying adequate, safe and secure housing as required by international law.*³⁶⁹

³⁶² UN General Assembly, Report of the Special Rapporteur on extreme poverty and human rights, 23 April 2019, UN doc A/HRC/41/39/Add.1 Available at: <https://daccess-ods.un.org/access.nsf/GetFile?Open&DS=A/HRC/41/39/Add.1&Lang=E&Type=DOC> (Accessed: 8 August 2020), p9

³⁶³ Legal Voice, *Were Grenfell Tower residents denied access to justice?*, 8 August 2017. Available at: <http://legalvoice.org.uk/grenfell-tower-residents-denied-access-justice/> (Accessed: 8 August 2020)

³⁶⁴ Cooper & Whyte (n318), pp3 & 5

³⁶⁵ Ibid, p6

³⁶⁶ Ibid, p3

³⁶⁷ Nadj (n292), pp4-5

³⁶⁸ Ministry of Housing, Communities and Local Government (2020) *Building Safety Programme: Monthly Data Release (as of 31 May 2020)*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/891421/Building_Safety_Data_Release_May_2020.pdf (Accessed 2 August 2020)

³⁶⁹ Hohmann (n292), p4

This concern led the Special Rapporteur on the right to adequate housing to write to the Government in April 2020 about “allegations of multiple violations of the human right to adequate housing, of which safety is a key component – contrary to international human rights law”.³⁷⁰

It is these clear links between the experiences of the residents of Grenfell Tower and communities across the UK which led counsel for victims and survivors to submit in June 2018:

*...if we do not ask the question now as to whether race, religion or social class played any part in the events surrounding the fire at Grenfell and answering it with recommendations for the future, we will be putting at risk the lives of thousands, if not hundreds of thousands, of people from black and minority ethnic communities, who are overrepresented in high-rise blocks throughout Britain.*³⁷¹

3.2.3 The Chair’s proposal for parallel process

In his letter to the Prime Minister enclosing his draft ToR, the chair said that issues raised by respondents to the consultations of a “social, economic and political nature”, which he believed would not be suitable for a judge-led inquiry:

...could more appropriately be examined by a different kind of process or body, one which could include persons who have experience of the provision and management of

³⁷⁰ Letter from the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living to the United Kingdom, AL GBR 2/2020, 29 April 2020. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25205> (Accessed: 8 August 2020)

³⁷¹ Grenfell Tower Inquiry, Transcript of oral hearing, 5 June 2018. Available at: <https://assets.grenfelltowerinquiry.org.uk/documents/transcript/Transcript-of-opening-statements-5-June.pdf> (Accessed: 8 August 2020), pp148-149

*social housing...It could operate in parallel with the Inquiry and would be welcomed by many.*³⁷²

In her reply, the Prime Minister said:

*[The] Government will now consider how best to address the issues of social housing you have raised. What is clear is that there are a number of concerns, which have gone unheard for too long. The Housing Minister, Alok Sharma, will personally meet and hear from as many social housing tenants as possible both in the immediate area around Grenfell Tower, but also across the country, to help build up a comprehensive picture of some of the immediate issues facing tenants, as well as to identify any common concerns that must inform any national approach. There will be a further announcement on this work shortly.*³⁷³

In August 2018, the Government published a ‘green paper’ on social housing reform, which suggested that Ministers had conducted a meeting tour of England during which they “met almost 1,000 people”, and their Department had reviewed more than 7,000 submissions.³⁷⁴ This paper discusses the “stigma” felt by residents of social housing, it attributes this to perceptions amongst the general public, portrayals in the media and the language used by politicians. There is no mention of ‘discrimination’. A consultation exercise was subsequently run on this paper, but it does not appear that the outcome of the feedback received has yet been published, or what further steps the Government proposes to take in relation to it.³⁷⁵

³⁷² Grenfell Tower Inquiry, Letter from the Chair to the Prime Minister, 10 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/Letter_Grenfell_Tower_Inquiry.pdf (Accessed: 8 August 2020)

³⁷³ Grenfell Tower Inquiry, Letter from the Prime Minister to the Chair, 15 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/MMB_Letter_-_Grenfell.pdf (Accessed: 8 August 2020)

³⁷⁴ Ministry of Housing, Communities and Local Government (2018) *A new deal for social housing*, Cm 9671. Available at: <https://www.gov.uk/government/consultations/a-new-deal-for-social-housing> (Accessed: 8 August 2020), p7

³⁷⁵ For the purposes of this thesis, a request under the Freedom of Information Act 1998 has been made for any documentary evidence of this decision-making. However, the Government has responded that the information it holds, if disclosed, would adversely affect the delivery of effective government and public services, and it is currently considering whether the balance of the public interest favours its disclosure.

3.3 Participation of victims and survivors

The second area of the Inquiry's work which is key to an assessment of its transformativeness, is the extent to which it has allowed victims and survivors to participate. In August 2017, Justice4Grenfell submitted to the Inquiry:

*...victims and survivors must be placed at the heart of this Inquiry so that all findings and recommendations are grounded in the experiences and accounts of those victims and survivors.*³⁷⁶

As one victim or survivor told INQUEST, a charity working in response to state related deaths, "Participation in a meaningful way is what would give the Inquiry credibility. Justice must be seen to be done".³⁷⁷ Some degree of participation for family members is also required by law. Under the case law of the EctHR, if it is going to be sufficiently transparent, the inquiry must allow relatives of deceased victims to be involved, by providing them with relevant documents and witness statements.³⁷⁸ The chair has recognised that the Inquiry's obligations under Article 2 ECHR include: "an opportunity for the next-of-kin to be involved in the procedure to the extent necessary to safeguard their legitimate interests..."³⁷⁹

Before giving his opening statement at the beginning of the Inquiry, the chair asked those attending to observe a minute's silence: "as a mark of respect for those who died and for those whose lives have been

³⁷⁶ Justice4Grenfell, *Grenfell Tower Fire Public Inquiry Terms of Reference Consultation: Submissions made on behalf of Justice4Grenfell Campaign*, 3 August 2017. Available at: <https://justice4grenfell.org/wp-content/uploads/2017/08/Justice4Grenfell-Proposed-Terms-of-Reference-Grenfell-Inquiry-3.3.17..pdf> (Accessed: 8 August 2020), p3

³⁷⁷ INQUEST, *Family reflections on Grenfell: No voice left unheard*, May 2019. Available at: <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=47e60cf4-cc23-477b-9ca0-c960eb826d24> (Accessed: 8 August 2020), p20

³⁷⁸ *Hugh Jordan v UK*, Application no. 24746/94, 4 May 2001. Available at: <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-59450&filename=001-59450.pdf> (Accessed: 11 August 2020), paras. 133–134

³⁷⁹ Grenfell Tower Inquiry, Ruling on applications by certain core participants for funding to cover the cost of translating the Phase 1 report, 14 May 2020. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/2020.05.14%20Ruling%20-%20cost%20of%20translating%20the%20Phase%201%20Report.pdf> (Accessed: 8 August 2020), p4

changed forever by the loss of those whom they loved.”³⁸⁰ In May 2018, the Inquiry opened with eight days of hearings focused on commemorating these victims, at which families were able to pay tribute to them.³⁸¹ This was welcomed by victims and survivors as a way of recognising that those killed were more than just a statistic, offering catharsis, and humanising the inquiry process.³⁸²

*The pen portrait for my family was the only way her mother was able to say her last goodbye to her daughter and show the world how beautiful she was.*³⁸³

Forty pages of the Phase 1 report are devoted to remembering those killed, in order to “celebrate their lives as individuals, drawing on the evidence given by loved ones and friends at the commemoration hearings and in witness statements made to the Inquiry.”³⁸⁴ These are important symbolic actions.

On a more substantive level, all survivors, residents and families of victims who died or were injured (and so could not attend themselves) were granted individual core participant status if they applied for it.³⁸⁵ Before hearings were suspended due to the coronavirus pandemic, they were open to the public, without the need to register in advance. They were live-streamed on the Inquiry’s website, where they were available to watch later, and were also live-streamed to a church near to the site of Grenfell Tower.³⁸⁶ This was welcomed by victims and survivors for the access it gave to those who could not attend hearings.³⁸⁷ Those who did attend received travel and subsistence costs,³⁸⁸ and specialist staff

³⁸⁰ Grenfell Tower Inquiry, Transcript of oral hearing, 14 September 2017. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/Transcript-of-Inquiry-opening-14-September-2017.pdf> (Accessed: 8 August 2020), p1

³⁸¹ Grenfell Tower Inquiry, *Commemoration hearings*, 16 May 2018. Available at: <https://www.grenfelltowerinquiry.org.uk/news/commemoration-hearings> (Accessed: 8 August 2020)

³⁸² INQUEST (n376), p21

³⁸³ Ibid

³⁸⁴ Grenfell Tower Inquiry (n228), Vol 4, p727

³⁸⁵ Grenfell Tower Inquiry, *Protocol for considering applications for core participant status*, 18 August 2017. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/Protocol%20for%20considering%20applications%20for%20core%20participant%20status%20-%20December%202017.pdf> (Accessed: 8 August 2020), p2

³⁸⁶ Grenfell Tower Inquiry, *Inquiry issues update on hearing venue*, 19 June 2018. Available at: <https://www.grenfelltowerinquiry.org.uk/news/inquiry-issues-update-hearing-venue> (Accessed: 8 August 2020)

³⁸⁷ INQUEST (n376), p24

³⁸⁸ Grenfell Tower Inquiry, *Financial report to 31 March 2019*. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline->

have been available to provide mental health support at hearings and remotely. Some key documents, including an executive summary of the Phase 1 report, have also been translated by the Inquiry into languages spoken by the victims and survivors, such as Arabic and Farsi.³⁸⁹

However, a number of concerns have been raised about the extent to which the Inquiry has encouraged participation. From its work with victims and survivors of the fire, INQUEST found that there was no apparent systematic approach to engaging with families at the beginning of the Inquiry. Those who were already connected to community support groups or had legal representation learned about it quickly, whilst others did not do so until later - some may have been unaware about it even after it started.³⁹⁰ There have also been concerns that the Inquiry's communication strategy relies too much on its website and social media, which are not accessible to all members of a diverse group of victims and survivors.³⁹¹

Families told INQUEST that the best way to encourage their participation was to install a diverse panel.³⁹² The appointment of the Inquiry's panel members has been discussed above. During a procedural hearing in December 2017, the chair floated the idea of a separate "consultative panel of local people...who could talk to the inquiry and receive information from the inquiry and become to that extent more involved..."³⁹³ In its response to the petition started by victims' families urging the appointment of main panel members, the government expressed its support for this idea of a consultative panel.³⁹⁴ However, victims and survivors made clear that although such a panel could be helpful, it could not operate as a satisfactory alternative to representation on the main panel, sitting "in parity alongside the judge", and, crucially, anointed with decision-making powers.³⁹⁵ Having heard this

[files/Grenfell%20Tower%20Inquiry%20financial%20report%20to%2031%20March%202019.pdf](#) (Accessed: 8 August 2020)

³⁸⁹ Grenfell Tower Inquiry, *Guides to the Inquiry*, 8 December 2017. Available at:

<https://www.grenfelltowerinquiry.org.uk/news/guides-inquiry> (Accessed: 8 August 2020); Grenfell Tower Inquiry (n228)

³⁹⁰ INQUEST (n376), p19

³⁹¹ Ibid, p31

³⁹² Ibid, p20

³⁹³ Grenfell Tower Inquiry, Transcript of oral hearing, 11 December 2017. Available at:

<https://assets.grenfelltowerinquiry.org.uk/inline-files/Transcript-of-Procedural-Hearing-11-December-2017.pdf> (Accessed: 8 August 2020), pp65-66

³⁹⁴ Parliament, Petition (n243)

³⁹⁵ Grenfell Tower Inquiry, Transcript of oral hearing, 11 December 2017. Available at:

<https://assets.grenfelltowerinquiry.org.uk/inline-files/Transcript-of-Procedural-Hearing-11-December-2017.pdf> (Accessed: 8 August 2020), p66; Grenfell Tower Inquiry, Chairman's response to submissions made on 11 – 12 December 2017. Available

position, the chair indicated that he would ask the Inquiry team to explore the idea in consultation with local residents.”³⁹⁶ It is not clear what happened subsequently, but no such consultative panel has been appointed.

One of Justice4Grenfell’s submissions to the Inquiry has been that bereaved families should be allowed (through their legal representatives) to ask questions directly of witnesses.³⁹⁷ However, during Phase 1 they were not allowed to do so,³⁹⁸ instead having to submit proposed questions to counsel to the Inquiry at least five days before the hearing. This made many of them feel “at one stage removed” from the proceedings, and restricted their ability to inform their questions with new evidence that emerged during that period.³⁹⁹ The EHRC have submitted that another consequence is that some issues particularly important to victims and survivors would not be fully explored.⁴⁰⁰ INQUEST was told that the ability to ask questions directly of witnesses was one of the Grenfell victims and survivors’ chief concerns: “...whether Martin Moore Bick wants to ask that question, wants that answer, or not. We want the answer to that question.”⁴⁰¹ According to another advocate:

*...that means that they have sat through the whole of that process and essentially been silent throughout...the impact of that just can’t be underestimated...it hugely undermines the confidence of the bereaved and survivors in the process...*⁴⁰²

A number of criticisms have also emerged about hearings, including their location, the layout of the hearing room, and the nature of proceedings. The first procedural hearing took place in December 2017

at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/Chairmans-Response-20.12.17.pdf> (Accessed: 8 August 2020), p17; Justice4Grenfell, *J4G press release – 12th Dec 2017*. Available at: <https://justice4grenfell.org/453/> (Accessed: 8 August 2020)

³⁹⁶ Grenfell Tower Inquiry, Chairman’s response to submissions made on 11 – 12 December 2017. Available at:

<https://assets.grenfelltowerinquiry.org.uk/inline-files/Chairmans-Response-20.12.17.pdf> (Accessed: 8 August 2020), p17

³⁹⁷ Justice4Grenfell, *Grenfell Tower Fire Public Inquiry Terms of Reference Consultation: Submissions made on behalf of Justice4Grenfell Campaign*, 3 August 2017. Available at: <https://justice4grenfell.org/wp-content/uploads/2017/08/Justice4Grenfell-Proposed-Terms-of-Reference-Grenfell-Inquiry-3.3.17..pdf> (Accessed: 8 August 2020)

³⁹⁸ JUSTICE (n192), Paul Bowen QC & Charlotte Haworth Hird; Equality and Human Rights Commission (n92), p63

³⁹⁹ INQUEST (n376), p24

⁴⁰⁰ Equality and Human Rights Commission (n92), p8

⁴⁰¹ INQUEST (n376), pp22-23

⁴⁰² JUSTICE (n192), Charlotte Haworth Hird

in Holborn,⁴⁰³ a 30 minute journey by public transport from Grenfell Tower. At this hearing, a number of counsel for victims and survivors suggested that, when substantive hearings began, they should take place at a location closer to the Tower. The chair however told them that it had not been possible to find a closer venue with the necessary size, facilities and availability - Holborn had been found to be the closest practicable location.⁴⁰⁴ Holborn also happens to be the legal district of London, filled with courts and tribunals, barristers chambers and solicitors firms, and so would have been convenient for many of the lawyers involved. However, it has been said by some victims and survivors to be difficult for them to reach, particularly those with childcare responsibilities:

*Like many of the BSRs [bereaved, survivors and relatives] I work and have children, so getting time off to go to the inquiry is hard in itself, never mind getting to and from central London during peak rush hour. I know I'm not the only one finding it difficult.*⁴⁰⁵

It was felt particularly challenging to effectively require them to use public transport at busy times in order to attend traumatic proceedings:⁴⁰⁶ “[t]hey want me to relive that night and then get on a tube [train] in rush hour to get home.” The EHRC have suggested that as a result of the location, “very few (and frequently none) of the survivors, the bereaved and members of the wider community attend the Inquiry”.⁴⁰⁷ This issue has been central to the participation of victims and survivors: “This is our inquiry. I don’t think it’s too much to ask for it to take place near our community. Survivors and bereaved need to be at the heart, not just lawyers.”⁴⁰⁸ INQUEST found that the “vast majority” of families they heard

⁴⁰³ Grenfell Tower Inquiry, *Procedural hearing: 11 and 12 December*, 6 December 2017. Available at: <https://www.grenfelltowerinquiry.org.uk/news/procedural-hearing-11-and-12-december> (Accessed: 8 August 2020)

⁴⁰⁴ Grenfell Tower Inquiry, Chairman’s response to submissions made on 11 – 12 December 2017. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/Chairmans-Response-20.12.17.pdf> (Accessed: 8 August 2020); Grenfell Tower Inquiry, *Inquiry issues update on hearing venue*, 19 June 2018. Available at: <https://www.grenfelltowerinquiry.org.uk/news/inquiry-issues-update-hearing-venue> (Accessed: 8 August 2020)

⁴⁰⁵ The Guardian, ‘They want me to relive Grenfell then get on a rush-hour tube home’, 24 September 2018. Available at: <https://www.theguardian.com/uk-news/2018/sep/24/they-want-me-to-relive-grenfell-then-get-on-a-rush-hour-tube-home> (Accessed: 8 August 2020)

⁴⁰⁶ Justice4Grenfell, *Press release – change of venue for the public inquiry*. Available at: <https://justice4grenfell.org/1869/> (Accessed: 8 August 2020)

⁴⁰⁷ Equality and Human Rights Commission (n292), p63

⁴⁰⁸ The Guardian, ‘They want me to relive Grenfell then get on a rush-hour tube home’, 24 September 2018. Available at: <https://www.theguardian.com/uk-news/2018/sep/24/they-want-me-to-relive-grenfell-then-get-on-a-rush-hour-tube-home> (Accessed: 8 August 2020)

from “were disappointed that no consultation was undertaken to determine what families wanted from a venue”,⁴⁰⁹ and it recommended that “Families should be engaged in an inclusive consultation exercise to determine a mutually acceptable venue”.⁴¹⁰

The layout of the hearing room was also criticised: “We’ve got just a few seats squeezed in the corner for us. It feels like it’s set up for lawyers, not for us.”⁴¹¹ To victims and survivors in these kinds of proceedings, the place that they are able to occupy in a hearing room can be extremely important: they often want to be able to physically confront the people who may have done them wrong by sitting directly in front of them as they give their evidence.⁴¹² In this way, they can see and be seen by witnesses:⁴¹³ “they should be looking us in the eye”.⁴¹⁴ Accordingly, in May 2019, INQUEST recommended that “[t]he layout of the room must situate families at the heart of the proceedings rather than as bystanders”.⁴¹⁵

In June 2019, the venue for hearings was moved to a location 10 minutes closer to Grenfell Tower,⁴¹⁶ and by the beginning of the Phase 2 hearings, the designated seating for victims and survivors had been moved to the centre of the hearing room, facing the panel and witnesses.⁴¹⁷ Justice4Grenfell welcomed the change in venue, but suggested that:

*...this is another issue in a long list of others where bereaved families, survivors and residents have had to fight to be heard and then had to wait for months for an answer or change.*⁴¹⁸

⁴⁰⁹ INQUEST (n376), p22

⁴¹⁰ Ibid, p30

⁴¹¹ The Guardian, ‘They want me to relive Grenfell then get on a rush-hour tube home’, 24 September 2018. Available at: <https://www.theguardian.com/uk-news/2018/sep/24/they-want-me-to-relive-grenfell-then-get-on-a-rush-hour-tube-home> (Accessed: 8 August 2020)

⁴¹² JUSTICE (n192), Thalia Maragh

⁴¹³ INQUEST (n376), p23

⁴¹⁴ Ibid

⁴¹⁵ Ibid, p31

⁴¹⁶ Grenfell Tower Inquiry, *Contact*. Available at: <https://www.grenfelltowerinquiry.org.uk/contact> (Accessed: 8 August 2020)

⁴¹⁷ Grenfell Tower Inquiry, <https://www.grenfelltowerinquiry.org.uk/venue>

⁴¹⁸ Justice4Grenfell, *Press release – change of venue for the public inquiry*. Available at: <https://justice4grenfell.org/1869/> (Accessed: 8 August 2020)

There have also been a number of criticisms made of the nature of the Inquiry's proceedings, including interpretation services: families have not always been assigned the same interpreter, or provided with one who spoke the right dialect,⁴¹⁹ and the reliance on interpreters sitting next to victims and witnesses compelled one family to watch proceedings via live stream because they did not want to disturb the proceedings. It has been suggested that receiving interpretation via headphones would work better. Some have felt that the lawyers have spoken too quickly for attendees and interpreters to understand,⁴²⁰ and there has been a perceived failure to make some of the more complicated legal and technical information easier to follow.⁴²¹

In March 2020, oral hearings were suspended due to the spread of Covid-19.⁴²² The Inquiry subsequently wrote to core participants, proposing three options: holding no hearings until social restrictions were lifted completely; conducting fully remote hearings; or resuming hearings with "limited attendance" when restrictions were partially lifted.⁴²³ The Inquiry suggested the following:

*There is a fundamental balancing exercise to be carried out, by the Panel, between the need to maintain momentum and further the Inquiry's work by taking oral evidence and the need to maintain the integrity and quality of that evidence as well as the physical and psychological well-being of the witnesses and other key participants.*⁴²⁴

It is notable that there is no mention here of the importance to the participation of victims and survivors of their being able to attend hearings in person. When hearings re-started in July 2020, it had been decided that, in order to comply with government requirements, attendance would be limited to

⁴¹⁹ INQUEST (n376), p24

⁴²⁰ Ibid, p24

⁴²¹ Ibid, p25

⁴²² Grenfell Tower Inquiry, Venue, <https://www.grenfelltowerinquiry.org.uk/venue>

⁴²³ Grenfell Tower Inquiry, *Update from the Inquiry* 21 April 2020. Available at: <https://www.grenfelltowerinquiry.org.uk/news/update-inquiry-39> (Accessed: 8 August 2020)

⁴²⁴ Ibid

“participants whose physical presence is essential in order for proceedings to take place”.⁴²⁵ The decision that this would not include the attendance of victims and survivors appears to have come as a surprise as, according to Justice4Grenfell, they were under the impression that ‘limited attendance’ would include some victims and survivors.⁴²⁶ When hearings were re-started, a representative for victims and survivors submitted that “They do not and cannot feel in the circumstances that they are at the heart of the process.”⁴²⁷

3.4 Analysis of case study

This thesis analyses the Grenfell Tower Inquiry against the major features of transformative justice, which are the examination of ESC issues and structural violence, and the participation of victims and survivors.

3.4.1 Neglect of ESC rights and structural violence

The courts of England and Wales are made up of a complicated structure of courts and divisions, one of these, the Administrative Court, hears challenges to the decisions of government and public bodies, including housing decisions. The decision to nominate a commercial judge, rather than a judge with broader expertise in public law decision making, suggests that from its beginning the Inquiry was seen by the Prime Minister (and perhaps the head of the judiciary) as being primarily about issues of a commercial, technical nature, rather than one primarily about public law decision making in areas such as social housing.

⁴²⁵ Grenfell Tower Inquiry, Grenfell Tower Inquiry venue COVID-19 Risk Assessment Information June 2020. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/GTI%20Risk%20Assessment%20Information.pdf> (Accessed: 8 August 2020), p3

⁴²⁶ Justice4Grenfell, *J4G inquiry statement, opening of the Grenfell Tower Inquiry*. Available at: <https://justice4grenfell.org/2741/> (Accessed: 8 August 2020)

⁴²⁷ Grenfell Tower Inquiry, Transcript of oral hearing, 7 July 2020. Available at: <https://assets.grenfelltowerinquiry.org.uk/documents/transcript/Transcript%207%20July%202020.pdf> (Accessed: 8 August 2020), p13

This impression is compounded by the chair's comment that he was appointed on the basis that his Inquiry "would be pretty well limited to the problems surrounding the start of the fire and its rapid development", which strongly suggests that this understanding formed the basis of any discussions he (or the head of the judiciary) had with the Prime Minister or her staff. On the basis of this comment alone, it can be surmised that the Prime Minister intended before any discussions or consultations had taken place to avoid including broader ESC issues in the ToR. This starting point, coupled with the decision that a judge should be appointed to chair the Inquiry, and Sir Martin's view that it would not be appropriate for a judge-led inquiry to examine "questions of a social, economic, and political nature",⁴²⁸ led to the exclusion of these issues from the ToR. The Prime Minister's written statement to Parliament that "No stone will be left unturned" by the Inquiry could be dismissed as a turn of phrase. But victims and survivors were entitled to take the Prime Minister at her word, and have been understandably disappointed that it has not been kept.

Why might the Prime Minister and the chair have wanted to exclude ESC issues? The reasons put forward in the chair's letter of 10 August 2017, and accepted in the Prime Minister's response, are (i) that they are not suitable for a judge-led inquiry, and (ii) a need for the Inquiry to complete its work as soon as possible. This exchange of letters indicates an agreement between the chair and the Prime Minister that, if the Grenfell Tower Inquiry were a different mechanism with a different leadership, operating under lesser urgency, it may be appropriate to include these ESC issues. This, in turn, relies on a shared understanding that these ESC issues are relevant to the examination of the fire – if they were not, then they could simply have been dismissed on that basis without any need for further justifications.

The first justification put forward for not including these otherwise relevant issues, that it is a judge-led inquiry, has two elements: the inquiry, and the judge. As has been seen, a public inquiry is an investigation into the evidence available about particular events, with relevant witnesses providing documentary and oral evidence, and a decision-making chair or panel producing a report based on that evidence. There is nothing inherent in this process that would make it unsuitable to consider issues such

⁴²⁸ Grenfell Tower Inquiry, Letter from the Chair to the Prime Minister, 10 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/Letter_Grenfell_Tower_Inquiry.pdf (Accessed: 8 August 2020)

as discrimination based on race, ethnicity, poverty or class. Any mechanism seeking to learn about these issues is going to need to seek evidence about it, consider that evidence and come to some relevant findings. Inquiries are designed for this very purpose.

Where an inquiry may struggle is in the sheer scale of the evidence gathering and examination process necessary to examine these issues. Clearly, broadening the scope of the ToR from the causes of the fire, such as the refurbishment of the building, to all aspects of the relationship between its residents and the authorities, would lead to significant increases in the duration and cost of the Inquiry. Add to this the examination of the experiences of the same communities across the country, and it could grow into something of a behemoth. This is not to say that an inquiry with sufficient resources could not complete this task – the Independent Inquiry into Child Sexual Abuse mentioned above has a huge mandate, investigating the extent to which state and non-state institutions across England and Wales have failed to protect children in their care from child sexual abuse, including Government, Parliament, police services, schools, prisons, religious organisations and the armed forces. However, there is some weight to the argument that a truth commission may be better placed to examine patterns of racial and ethnic discrimination on a national scale. Indeed, it has been proposed that a truth commission should be set up to examine the legacy of the British empire,⁴²⁹ including the effects of racial and ethnic discrimination. However, such a commission appears a long way off, if not politically impossible.

The second suggested reason for excluding ESC issues from the ToR is that the chair is a judge. This thesis has shown that judges are regularly appointed to chair inquiries, and are valued for their analytical skills and judgement, their experience in hearing management, and their professional status. In some cases, they are also chosen for their subject matter expertise – as here, with Sir Martin’s experience in commercial matters. However, the suggestion that the identity of a chair should be determinative of the inquiry’s ToR is highly problematic. To many interested parties, particularly victims and survivors, the scope of the inquiry is likely to be just as important, if not more so, than the identity of the person

⁴²⁹ Guardian, *Britain needs a truth and reconciliation commission, not another racism inquiry*, 16 June 2020. Available at: <https://www.theguardian.com/commentisfree/2020/jun/16/britain-truth-reconciliation-commission-racism-imperial> (Accessed: 11 August 2020)

chairing it: there may be little value in an inquiry led by a chair who is respected by all if they are only entitled to examine a small part of the relevant events.

This points to an issue with the 2005 Act, which requires the minister setting up the inquiry to select a chair before finalising the terms of reference (because they are obligated to consult that person before doing so).⁴³⁰ The advantages of this are clear – a prospective chair should feel comfortable with the scope of the inquiry they are agreeing to undertake. But it means that one decision that may well shape the scope of the Inquiry has to be made before fully considering what that scope should be.

In practice, it can change the governing question about the ToR from ‘What are the most appropriate terms of reference?’, to ‘What are the appropriate terms of reference that can suitably be applied within the limits set by the identity of the chair?’.

There is also the matter of Sir Martin’s judgement. In recommending that ESC issues be excluded partly on the basis that he had been appointed as chair, he placed his own leadership of the Inquiry above the consideration of the most appropriate ToR. Another option open to him, if he had thought it appropriate, would have been to recommend that the relevant ESC issues be included, and that another chair be appointed in his place with the necessary expertise to investigate them.

The second reason put forward for excluding ESC issues was the need for speed. This is one of a number of occasions in which the Prime Minister and the chair have expressed their desire to see a report into the fire produced as soon as possible, so that lessons could be learnt to prevent future fires from occurring. It seems to have driven the decision not to appoint panel members for Phase 1,⁴³¹ and implicitly to restrict both the length of the consultation period on the ToR⁴³² and the final document.⁴³³ This desire on its own is, of course, entirely appropriate. However, as has been discussed, this issue

⁴³⁰ Section 5(4) of the Inquiries Act 2005 (n112)

⁴³¹ Government Legal Department (n250)

⁴³² Grenfell Tower Inquiry, *Grenfell Tower Inquiry seeks views on its work*, 5 July 2017. Available at: <https://www.grenfelltowerinquiry.org.uk/news/grenfell-tower-inquiry-seeks-views-its-work> (Accessed: 8 August 2020)

⁴³³ Parliament, Petition (n243); Grenfell Tower Inquiry, Letter from the Chair to the Prime Minister, 10 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/Letter_Grenfell_Tower_Inquiry.pdf (Accessed: 8 August 2020); Grenfell Tower Inquiry, Letter from the Prime Minister to the Chair, 15 August 2017. Available at: https://assets.grenfelltowerinquiry.org.uk/inline-files/MMB_Letter_-_Grenfell.pdf (Accessed: 8 August 2020)

could be sufficiently addressed by including them in a further consecutive module, with the technical “defects in the design, construction (including refurbishment) and management of the building” referred to by the chair reported on first, and the impact of discrimination based on race, ethnicity, poverty and class afterwards, perhaps with the support of specialist panel members. This is what was later proposed by victims and survivors,⁴³⁴ and by the then Leader of the Labour Party, Jeremy Corbyn, who suggested in July 2017:

*that an immediate inquiry into the proximate causes of the Grenfell Tower fire should be supplemented by a longer-term, more wide-ranging inquiry into the underlying causes of what went wrong and the extent to which they are replicated on a national scale.*⁴³⁵

This would be a somewhat artificial exercise, as the evidence suggests that discrimination may have played an important role in the refurbishment and management of the building, but for the purposes of allowing for a comprehensive ToR that did not exclude ESC issues, it would offer an obvious, practical solution. This option does not appear to have been considered by either the Prime Minister or the chair.

This thesis proposes two further reasons for the reluctance to address ESC issues. The first is that including such matters in the ToR would inevitably increase the amount of evidence that the Inquiry would need to seek and review, which would add to its duration and cost. As outlined above, this is an issue with inquiries that has attracted considerable criticism. This leads to the second limited resource: political will. As suggested above, an inquiry can serve useful political functions for a government, in showing that it takes the relevant issues seriously, demonstrating accountability and a willingness to make any necessary reforms. But if considered a rational actor seeking to protect its interests, the most convenient outcome for the government is likely to be a limited investigation leading to technocratic recommendations that some policies be updated, some processes amended – changes that can be made

⁴³⁴ The Guardian, *Grenfell families want inquiry to look at role of ‘race and class’ in tragedy*, 26 July 2020. Available at: <https://www.theguardian.com/uk-news/2020/jul/26/grenfell-families-want-inquiry-to-look-at-role-of-race-and-class-in-tragedy> (Accessed: 8 August 2020)

⁴³⁵ Justice4Grenfell, *Grenfell Tower Fire Public Inquiry Terms of Reference Consultation: Submissions made on behalf of Justice4Grenfell Campaign*, 3 August 2017. Available at: <https://justice4grenfell.org/wp-content/uploads/2017/08/Justice4Grenfell-Proposed-Terms-of-Reference-Grenfell-Inquiry-3.3.17..pdf> (Accessed: 8 August 2020)

relatively painlessly. The government is likely to be less interested in establishing an inquiry that it suspects could lead to highly damaging results for it, such as may result from the identification of systemic discrimination against minorities and disadvantaged communities, by a State that it has led in some form for eleven years.

The consequences of the exclusion of ESC issues from the ToR are considerable. The circumstances of the fire demonstrate a *prima facie* breach of the right to housing, as set out in a variety of international human rights treaties imposing binding obligations on the UK, as the lack of maintenance and, most obviously, the installation of flammable cladding, clearly endangered the lives of its inhabitants. Since the fire, the UK's piecemeal legislation governing safe housing has been criticised as “outdated, complex and poorly enforced”, and as failing to conform with international human rights standards.⁴³⁶ As a result, it has been argued that “the right to housing is not adequately protected in the UK”.⁴³⁷ The State is also bound by a number of international human rights treaties to avoid direct and indirect discrimination, including in the creation, allocation and maintenance of social housing. However, victims and survivors have alleged that a significant cause of the fire was the indirect, racial discrimination they suffered from the State,⁴³⁸ and that they were not listened to when they raised concerns about their safety because of their status as residents of social housing from immigrant communities.⁴³⁹

These allegations are not a localised anomaly, but are reflective of what has been documented at a national level, with allegations of racism in the broader housing system impacting on BAME communities, the broad neglect of social housing, and the erasure of complaints of working class and poor residents.⁴⁴⁰ A decade of austerity policies has only exacerbated these issues, with drastic cuts to

⁴³⁶ Equality and Human Rights Commission (March 2019) *Following Grenfell: Grenfell residents' access to public services and support*. Available at: <https://www.equalityhumanrights.com/en/publication-download/following-grenfell-grenfell-residents-access-services-and-support> (Accessed: 8 August 2020), p10

⁴³⁷ Hohmann (n292), p4

⁴³⁸ Victims and survivors (n331), p5

⁴³⁹ Big Issue, *Tiago Alves was home on the 13th floor when Grenfell Tower caught fire*, 14 June 2018. Available at: <https://www.bigissue.com/latest/social-activism/tiago-alves-was-home-on-the-13th-floor-when-grenfell-tower-caught-fire/> (Accessed: 8 August 2020)

⁴⁴⁰ Sánchez (n284), pp2-3 & 5

spending on social housing and legal aid, which has undermined the ability of social housing residents to challenge their worsening conditions. It is therefore important not just for the victims and survivors of Grenfell Tower, but for people from the same communities across the country, that these developments and their relationship to the fire are examined.

A human rights approach would go a long way towards remedying this need. The Inquiry's "human rights blindness" is therefore a lost opportunity for the State to examine and address its adherence to the binding treaties that it has ratified. It is also highly frustrating for victims and survivors, whose trust in the legitimacy of the Inquiry has clearly been severely undermined, and damaging to the Inquiry's ability to restore public confidence, which is one of its primary purposes. This decision will also be highly significant to the millions of people who continue to be affected by many of the same issues affecting the lives of the residents of Grenfell Tower.

3.4.2 Participation of victims and survivors

Sir Martin clearly struggled at the beginning of the Inquiry to win the trust of victims and survivors. However, it is apparent that he was not selected for this purpose, and his background does not suggest that he would be naturally adept at it. After all, judges tend to enjoy the automatic respect of those they work with because of their position – they are not used to so much weight being placed on their empathy and interpersonal skills.

Judges also have a challenging job that requires them to master and rule on a great number of cases which are often extremely complex, perhaps working on a number of matters simultaneously. In the course of a judge's career, the sheer number of decisions that they make, and the intricate scrutiny that these decisions receive from litigants, lawyers looking to understand and use the decisions in their own work, and higher courts applying or rejecting the decisions, makes it very likely that one or two of their decisions could be identified in which their reasoning or conclusions are challengeable. Furthermore, at least in theory, judges are not lawmakers – their decisions are merely said to reflect the current state of the law. For these reasons, caution should be exercised before using any one judgment to criticise or typify a judge's career. On the other hand, judges tend to be masters of their art, highly experienced and

knowledgeable. So at the very least, an objectionable decision can appropriately be used to illustrate something of their judgement at the time that it was made. So it is with the 2014 case in which Sir Martin appeared to the appellant's solicitors to lay the groundwork for 'social cleansing'. As it was covered contemporaneously in the press,⁴⁴¹ it would have been clear that it could be raised by critics of his appointment. This again might suggest something of the way the Inquiry was perceived by the Prime Minister and others: if it was seen as primarily about the experiences of victims and survivors, they might have thought twice about appointing Sir Martin, in order to avoid the kind of damaging headlines that resulted from calls for him to resign over the decision.

Sir Martin's extensive judicial experience, and specific expertise in commercial and financial matters, have already been put to highly effective use. His Phase 1 report was well-received and described as "strongly evidenced and reasoned".⁴⁴² The government accepted all his recommendations in principle, and a new Fire Safety Bill has been introduced to implement them. No doubt his skills will continue to be highly beneficial, particularly in examining the complex contracting and sub-contracting arrangements involved in the refurbishment of the tower which led to the installation of flammable cladding. However, the Prime Minister did not appoint any panel members to assist the chair during Phase 1, and Sir Martin's analytical strengths could only be sufficient for a single chair sitting alone if the inquiry was a wholly technical investigation. What is clear about the Grenfell Tower Inquiry is that the relevant issues are not wholly technical. This is not simply a story of a building catching fire, but of the destruction of 129 homes and the deaths of 72 people – a human tragedy, most clearly for the victims and survivors.

The evidence of this thesis is that the Inquiry has taken significant steps to recognise the importance of the victims and survivors to its work, and to enable their participation. The special commemoration hearings, the substantial portion of the report devoted to remembering those killed, and the later central seating in the hearing room, would have had significant symbolic value and played an important role in

⁴⁴¹ The Islington Tribune, '*Grenfell needs a judge who can understand humans*' say campaigners, 7 July 2017. Available at: <http://islingtontribune.com/article/grenfell-needs-a-judge-who-can-understand-humans-say-campaigners?sp=8&sq=Landmark> (Accessed: 8 August 2020)

⁴⁴² Nolan (n312)

making them feel recognised and valued by the Inquiry. More important still was the clearly justified step of granting them core participant status, which gave them access to evidentiary material, legal representation and the ability to propose questions for witnesses and make opening and closing statements. This made them ‘part’ in a procedural sense of the proceedings, as did the financial support available to attend hearings.

However, victims and survivors have also had significant concerns about the extent to which they have been allowed to substantively participate in the Inquiry. Though this is not common practice, they were not consulted on the selection of the chair or panel. The choice of a senior judge as chair, and specifically of Sir Martin, would have done nothing to aid their sense of representation. If their participation was higher up the list of priorities for the Prime Minister, she may have decided to appoint someone with professional experience of working with disadvantaged groups. In line with the statutory presumption, they have not been able to ask questions of witnesses through their own representatives. The originally allotted nine days for the public consultation on the ToR appears very limited given its vital importance to victims and survivors, the complexity of the issues involved and the need to allow respondents to find the time to consider them. To conduct a rushed consultation which did not give adequate opportunity for interested parties to feed into the drafting of the ToR might suggest that it was largely a public relations exercise. It is right therefore that it was extended to one month, particularly given the high level of interest illustrated by the hundreds of responses received. There was a perceived lack of outreach to victims and survivors when the Inquiry was being set up, and a communications strategy that may have relied too heavily on online tools that not all victims and survivors were familiar with.

It is quite possible that it was unavoidable that the first location for substantive oral hearings was in the heart of the legal district, rather than somewhere nearer the Tower and so more convenient for the majority of victims and survivors. However, this decision would not have encouraged them to feel that they were being placed at the heart of the Inquiry. Instead, it could only have encouraged the perception

of one person that “it’s not a public inquiry, it’s a lawyer’s inquiry”.⁴⁴³ This point is particularly serious if, as suggested by the EHRC, it was a key factor in whether victims and survivors attended oral hearings. Perhaps some engagement with the community in the process of choosing a location would have led to a more mutually acceptable location, or at least helped to encourage their support for the result. As it was, much effort from both victims and survivors, their representatives and the Inquiry team had to be expended on finding a second, closer venue.

Similarly, victims and survivors felt that they had to fight to be placed physically in the centre of the hearing room. Consultation on this point too may have exposed the issue earlier and saved further time, effort and frustration. There has also evidently been some work to do to help the many victims and survivors whose first language is not English to follow the proceedings. As for the resumption of oral hearings without any victims and survivors present due to coronavirus restrictions, this thesis does not presume to pass judgement on this complicated decision, other than to note that their attendance was not considered “essential in order for proceedings to take place”.⁴⁴⁴

Perhaps most importantly, the seeming inevitability of the exclusion of ESC issues from the ToR suggests that the ability of victims and survivors to “help shape” the ToR, which was central to their participation in the Inquiry, was fundamentally restricted from the outset, because it is unlikely that their requests would ever have been granted. On this evidence, the Inquiry’s efforts to enable the participation of victims and survivors can only be described as mixed, particularly in light of their very recent suggestion that they “cannot feel in the circumstances that they are at the heart of the process”.⁴⁴⁵

Participation cannot however be measured on the Inquiry’s acceptance of the requests of victims and survivors alone. Inquiries need to maintain a difficult balance between the demands of different parties, particularly core participants, whose interests may conflict with each other. Some requests, such as the

⁴⁴³ INQUEST (n376), p20

⁴⁴⁴ Grenfell Tower Inquiry, *Grenfell Tower Inquiry venue COVID-19 Risk Assessment Information June 2020*. Available at: <https://assets.grenfelltowerinquiry.org.uk/inline-files/GTI%20Risk%20Assessment%20Information.pdf> (Accessed: 8 August 2020), p3

⁴⁴⁵ Grenfell Tower Inquiry, Transcript of oral hearing, 7 July 2020. Available at: <https://assets.grenfelltowerinquiry.org.uk/documents/transcript/Transcript%207%20July%202020.pdf> (Accessed: 8 August 2020), p13

appointment of a member of their community to the panel, could perhaps be dismissed on the grounds that it would undermine the credibility of the process - particularly in light of the intention that the Inquiry will satisfy the State's investigative obligations under Article 2 ECHR, for which the independence of decision makers from the events under examination is key.

However, the resistance to some of the demands of victims and survivors may also reflect broader class conflict. There is an inherent tension between the life experience and interests of the professional classes (the ministers, lawyers, judges and civil servants) who set up and run inquiries, and victim communities who are often from disadvantaged and marginalised groups. The former are, on the whole, the beneficiaries of systemic ESC issues like discrimination and inequality, with their material interests bound up in the *status quo*. They will tend to view inquiries through the lens of the institutions they work for or represent, as a means to address a set of discrete, technocratic issues, without requiring fundamental changes to the structures they benefit from. They will therefore prioritise concerns such as costs and other resource constraints, which lend towards limiting the ToR. Victims and survivors on the other hand are more likely to suffer the effects of structural violence, and so would be the beneficiaries of the kind of systemic change that could result from an honest and comprehensive analysis of these structures. They may well see the inquiry as a means to attain this kind of justice, and so will be resistant to attempts to restrict it. As one resident of Grenfell Tower said:

*The people in charge of the inquiry...are for the most part white and privileged. They don't understand our realities because they're not connected to them.*⁴⁴⁶

⁴⁴⁶ The Guardian, Lawyers seek judicial review against PM over Grenfell inquiry panel, 12 September 2017. Available at: <https://www.theguardian.com/uk-news/2017/sep/12/grenfell-tower-fire-lawyers-seek-judicial-review-theresa-may-inquiry-panel> Accessed: 11 August 2020)

4. Conclusions

This thesis has outlined the emergence of transformative justice as a response to some deficiencies identified in the practice of transitional justice: its tendency to neglect violations of ESC rights and the effects of structural violence, and its failure to enable the effective participation of victims and survivors. These deficiencies have also been identified in the practice of the UK's most prominent transitional justice mechanisms: public inquiries.

Inquiries play an important role in the UK's constitutional framework, conducting vital fact-finding into high profile issues of public concern. They have a number of purposes, providing accountability for those responsible for wrongdoing, preventing reoccurrence, restoring public confidence and fulfilling the state's legal obligations. They can also offer some political benefits to the government establishing them. However, inquiries have traditionally been provided with technocratic ToR which do not extend to ESC issues. They are often led by senior judges, whose considerable analytical skills can be offset by a limited understanding of the life experiences of disadvantaged victims and survivors. They apply pseudo-formal, legalistic processes which offer victims and survivors significant but carefully prescribed opportunities to contribute, usually through legal representatives. Calls to broaden ToR or allow for more extensive participation are met with concerns about the effects on the independence, duration and cost of inquiries. There is little authoritative guidance that might help those running inquiries to engage with victims and survivors, and no central body monitoring the implementation of the inquiry recommendations that might benefit them.

The ongoing work of the Grenfell Tower Inquiry has been thorough and comprehensive within the ToR recommended by its chair and accepted by the Prime Minister. It has produced a well-received Phase 1 report into the night of the fire, which offers carefully reasoned recommendations about such matters as the work of the fire and rescue services and relevant legislation, the use and display of building plans and signage, the inspection and testing of lifts, the use of fire doors, and evacuation procedures. These will hopefully play a key role in avoiding future fires and further loss of life. However, the Inquiry has so far resisted all calls to include the effects of discrimination based on race, ethnicity, poverty and class in its ToR, which victims and survivors, interest groups and academics have argued played a key role in the causes of the fire. This fundamentally limits the extent to which the Inquiry's outcomes can be

transformative for victims and survivors. Without this mandate, the Inquiry is likely to do little or nothing to address discrimination and, although they may benefit in other ways from the Inquiry's work, victims and survivors will remain subject to this form of structural violence. This is a significant lost opportunity for the state to honestly examine the lessons offered by the fire about its adherence to international human rights law.

Victims and survivors have also been clear about their desire to be placed at the heart of the Inquiry. It has taken significant steps to engage with them, both because this is a statutory requirement and their evidence is crucial to its investigation, but presumably also as a reflection of empathy for the devastating impact the fire has had on their lives. As core participants, they have been treated as part of the structure of the inquiry, with privileged access to evidence and a formal role in the proceedings. They have received support for attending hearings (until they were prevented from attending them entirely due to the coronavirus pandemic), and the commemoration efforts both in hearings and the Phase 1 report had significant value.

However, this is also an area in which victims and survivors have felt frustration. Perhaps most importantly, their demands for a diverse panel of decision-makers have not been met - neither member of the current panel can be seen to be representative of local communities - and the Inquiry has received only limited expert evidence about the lived experiences of those most affected by the fire. The apparent futility of efforts to advocate for the inclusion of ESC issues in the ToR lends something of a performative nature to the consultation, at least in relation to this issue. Although a consultation exercise is not designed to allow interested parties to impose their own wishes on decision makers, it is problematic if, unbeknownst to those making representations, some of the options put forward have already effectively been blacklisted. There have also been issues with the location and physical layout of oral hearings, which the Inquiry has acknowledged and taken steps to rectify, and with the interpretation services that many victims and survivors rely on to follow proceedings. Victims and survivors have not been allowed to ask questions of witnesses through their own legal representatives, which contributes to the feeling that they are being kept at arms-length.

This thesis does not seek to lay all these criticisms at the doors of the Inquiry and the Prime Minister. There is a difficult balancing exercise to be done between the interests of the Inquiry's core participants, which also include commercial organisations involved in the tower's refurbishment, the fire and rescue services, and various public bodies. Also relevant is the common interest in an efficient, effective and independent inquiry, which will inevitably prohibit the acceptance of some demands. However, this thesis does criticise the refusal to appoint a panel member with expertise in the lived experience of victims and survivors, and the failure to appoint assessors or expert witnesses to fill this knowledge gap. The concerted effort to block any and all attempts to have the Inquiry examine ESC issues has itself fundamentally limited the participation of victims and survivors, for whom these issues are so important to their ability to contribute to the Inquiry's understanding of the fire.

Applying Arnstein's 'ladder of citizen participation', the wishes of some victims and survivors to exercise real influence on decision-making, including representation on the decision-making panel, would involve a form of power-sharing partnership with the chair, putting them on the top three rungs of participation with the Inquiry. However, the decisions of the chair and Prime Minister have held them down at rungs three or four, with privileged access to the workings of the inquiry that they have nevertheless sometimes struggled to follow, and limited consultation. The Inquiry may be able to point to legitimate procedural reasons for some of these decisions, but the effect on participation remains.

Without the examination of the role of ESC issues and the consequent effects of structural violence, and without the more than middling participation of victims and survivors, the Grenfell Tower Inquiry cannot be seen to be transformative according to the analytical framework provided by transformative justice. If this is a failure, it could be a failure by design: as long as the government appoints the chair and panel, and sets the ToR, political considerations are always likely to have an effect on an inquiry by shaping its leadership and the boundaries of its work. Restricting an inquiry's ToR can help the government avoid embarrassing truths being exposed, such as systemic discrimination affecting disadvantaged communities which has been fostered by its policies. However, this could be a false economy, as the failure to examine and address structural violence can allow insufficient lessons to be learnt, and similar tragedies to reoccur.

This is not to suggest that all inquiries must be transformative. If Grenfell Tower had been empty when it caught on fire, a purely technocratic approach may have been appropriate. But the Stephen Lawrence Inquiry and the Independent Inquiry into Child Sexual Abuse, both referenced above, demonstrate that inquiries are quite capable of examining ESC issues such as racial discrimination, and of encouraging the participation of victims and survivors beyond the bounds of their formal processes. As the “gold standard” of investigations,⁴⁴⁷ inquiries must not shy away from addressing alleged violations of the full spectrum of human rights and, where appropriate, working towards transformative ends. They should be given the mandate, leadership and resources to do so. If they are not, groups like Justice4Grenfell will continue to conclude: “they don’t want to find out what really happened, they don’t have to and more to the point, they don’t care!”⁴⁴⁸

⁴⁴⁷ Institute for Government (n114), p6

⁴⁴⁸ Justice4Grenfell, *J4G press release – response to announcement of EHRC independent inquiry*. Available at: <https://justice4grenfell.org/2131/> (Accessed: 8 August 2020)

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