

Court judgement on who decides Lakanal fire RRO prosecutions

The High Court has concluded that the London Fire Authority should retain responsibility for deciding whether there will be prosecutions for offences under the [Regulatory Reform \(Fire Safety\) Order 2005](#) (RRO), regarding the Lakanal House tower block fire (Camberwell) in which six people died. This judgement followed a challenge by the London Borough of Southwark, claiming potential conflicts of interest.

On 3 July 2009 there was a major fire at Lakanal House in Camberwell, a 14-storey tower block of flats owned by the London Borough of Southwark. Six people lost their lives as a result of the fire, many were injured and the other Lakanal residents suffered serious disruption.

The fire was comprehensively investigated by the Metropolitan Police, the Health and Safety Executive (HSE) and the London Fire and Emergency Planning Authority (Fire Authority). In addition, a lengthy inquest was conducted by the Coroner and a jury.

The inquest makes criticisms

The inquest heard evidence from investigations into the factors leading to the quick spread of fire in the building. These included reports from BRE, which was commissioned by the Metropolitan Police and the Fire Authority to carry out a reconstruction and computer modelling of the fire to examine its spread and assess the building's performance.

The verdict of the inquest, delivered in March 2013, identified areas of concern about the condition of the building before the fire, and about the actions of the London Fire Brigade on the day.

Fire Authority identifies potential RRO offences

Under the UK's statutory regime the Fire Authority has three separate and distinct responsibilities – firstly to promote fire safety, secondly to fight fires and thirdly to enforce the regulations in relation to fire safety. In April 2014, the Fire Authority informed Southwark that (in respect of the third of these responsibilities) its continued investigations had identified a number of potential offences committed under the RRO.

This action was based on evidence gathered following the fire, including expert evidence provided by BRE, which were principally concerned with the condition of Lakanal immediately prior to the fire..

However, the issue considered by the High Court in May 2016 (and reported in July 2016) did not directly concern any of the investigations into the fire. It was a challenge by Southwark in relation to the Fire Authority's decision to retain its enforcement role and asserting that the discretion under Article 26 of the RRO should have been exercised so as to "make arrangements with the HSE" to exercise its enforcement powers on the fire Authority's behalf.

Southwark questions Fire Authority impartiality

Southwark questioned the Fire Authority's ability to remain strictly impartial, claiming it was conflicted in making judgments on culpability in the case due to the public criticism of its own firefighting and rescue efforts. Southwark also described the Fire Authority's close involvement with the Borough in relation to the Authority's fire safety responsibilities as a potential area of conflict.

Option to transfer responsibility to HSE

Southwark alleged that the Fire Authority could not fairly assess the Council's culpability for fire safety failings at Lakanal House as the Fire Authority could be thought biased. The Fire Authority strongly contested the assertion that it may lack impartiality when making decisions on prosecutions in respect of the Lakanal fire. It pointed, for example, to the structure of the Authority in which responsibilities for promoting fire safety, for fighting fires, and for prosecuting transgressions in relation to the RRO, are handled separately by three distinct sections of the organisation. As a result those responsible for decisions on prosecutions are independent of those responsible for fire safety promotion and firefighting.

The Court rules on Southwark's challenge

The Court stated that any prosecution of Southwark regarding the Lakanal fire would be grounded firmly in the state of affairs that Southwark had permitted to develop at Lakanal House prior to the fire. On this basis the Court's findings included (briefly summarised) the following:

- The conduct of the Fire Authority (acting through the Fire Brigade) on the day of the fire (3 July 2009) is immaterial and therefore no conflict arises for the Fire Authority.
- The condition of the building prior to the fire (for example, the state of door seals and the standard of boxing in) is well documented and has been objectively assessed, and a number of matters (such as the lack of fire assessments) are not in issue. The fact that the Fire Authority provided fire risk assessment training to Southwark's employees is irrelevant.
- Decisions on prosecutions will be taken by a solicitor employed in a different wing of the Fire Authority's structure, with no direct link to the fire and rescue role separately fulfilled through the Brigade.

The Court noted that neither the Metropolitan Police nor the HSE saw any difficulty or issue of propriety in the Fire Authority being involved in the investigation and possible prosecution of Southwark for a breach of the RRO. The Court shared that view.