

Housing conditions, the law & best practice

Richard Paris - 2024

Housing conditions, the law & best practice – topics

- Damp, mould & condensation – Awaab's law
- Social Housing (Regulation) Act 2023 & new regulator standards
- Ombudsman themes & complaint handling
- Decent Homes Standard & Housing Health & Safety Rating System reviews
- Homes (Fitness for Human Habitation) Act 2018
- How to deal with problematic issues i.e. access, retrofitting, no-win no-fee claims management companies, damages & costs
- Tenants' obligations "using the property in a tenant-like manner"
- s.11 Landlord & Tenant Act 1985
- Defective Premises Act 1972
- Environmental Protection Act 1990 & statutory nuisance
- Defects in common parts & the duty of care
- The disrepair 'protocol'

Housing conditions, the law & best practice – programme

- 9.00 : Arrivals, registration and refreshments.
- 9.15 : Introductions, format of the course. Interpreting the law & best practice.
- 9.30 : Damp, mould & condensation – it's not life-style but?
- 10.15 : Homes (Fitness for Human Habitation Act) 2018. Why necessary, what is new what does it say, what does it cover.
- 11.00 : Break
- 11.15 : What is not covered. Minimising risk. Defences
- 12.00 : Disrepair. Who is responsible for what? Notice, access, standard of repair. What is repair, renewal or improvement
- 13.00 : Lunch.
- 13.30 : Duty of care & common parts.
- 14.00 : s.11-16 Landlord & Tenant Act 1985.
- 14.30 : Set-off & counter claims – pre-action protocols.
- 15.00 : Break.
- 15.15 : Defective Premises Act 1972. Gas Servicing. The Environmental Protection Act 1990.
- 16.00 : What does this mean for you & your organisation – action plans
- 16.30 : Close

Resources

- Housing Conditions : Tenants' Rights : 6th edition 2019. LAG : HHJ Jan Luba KC, Catherine O'Donnell, Giles Peaker
- <https://nearlylegal.co.uk/2018/12/fitness-for-habitation-a-thumbnail-guide/>
- Housing Health & Safety Rating System : House of Commons Library Briefing Paper July 2019
- <https://researchbriefings.files.parliament.uk/documents/SN01917/SN01917.pdf>
- <https://www.cih.org/blogs-and-articles/tackling-disrepair-claims>
- Surviving squalor : Britain's Housing Shame : ITV 12/9/2021
- <https://www.itv.com/hub/surviving-squalor-britains-housing-shame/10a1795a0001>
- A Practical Guide to Responding to Housing Disrepair and Unfitness Claims Paperback – 1/11/2021 : Ian Wightwick : Law Brief Publishing
<http://www.lawbriefpublishing.com/product/respondingtohousingdisrepairclaims/>
- Show Me the Bodies : How we let Grenfell Happen : Peter Apps 2022 Oneworld Books – mandatory reading
- Housing Disrepair Online Signposting Tool March 2021
- <https://check-how-to-get-repairs-done-in-your-rented-home.form.service.justice.gov.uk/>

Pre-Action Protocol for Housing Conditions Claims (England)

Consider other options

- Mediation - negotiation & settlement ADR
- Internal complaints
- Right to repair scheme
- Ombudsman
- Environmental health
- **Atkins-v-Bristol CC** : County Court : 20/2/2019 : council refused disclosure successfully argued PAP refers to above in **Paragraph 4 & should be tried before issuing claim Paragraph 5 (ENL / LOC)**
- **Churchill-v-Merthyr Tydfil BC** : Japanese Knotweed case but whether a claimant who unreasonably refuses to engage in ADR is in breach of the requirements of the PAP can be precluded from bringing or advancing a claim in court – **Court of Appeal : 8/11/2023**

Churchill-v-Merthyr Tydfil CBC : Court of Appeal : 29/11/2023

- Churchill allege infestation Japanese knotweed from council land - nuisance
- Claim issued August 2021 - £54,740 damages + costs £38,000 + injunction
- February 2022 council sought a **stay** in order that the matter maybe considered via **internal complaints procedure (ICP)**
- May 2022 County Court **dismissed stay** held bound by **Halsey-v-Milton Keynes 2004** - 'to **oblige** truly unwilling parties to refer their disputes to mediation would be to impose an **unacceptable obstruction on their right of access to the court**'
- **Court of Appeal held Halsey was obiter / not good law + question can internal complaints procedure be treated as ADR?**
- Court should only stay proceedings or order '**non-court-based resolution process** provided order made does not impair the very essence of claimant's right to proceed to hearing & proportionate to achieving legitimate aim of settling dispute **fairly, quickly & at reasonable cost**'

Churchill-v-Merthyr Tydfil CBC : Court of Appeal : 29/11/2023

- **Civil Procedure Rules** – overriding objective, encourage parties to use alternative dispute resolution, court can take into account whether or not either party complied with any relevant pre-action protocol (PAP), court may order party to pay money into court if it has 'without good reason failed to comply with a rule, practice direction or PAP
- Social Housing Law Association + Housing Law Practitioners Association were two of the seven intervenors
- Will Churchill-v-Merthyr Tydfil CBC help when landlords who feel they are being **targeted by claims management companies**?
- Depends on how **quick, robust & independent** internal complaints mechanism are seen to be?
- Can tenant be legally represented for such procedure – if not, why not?
- What do you do if **threatened with legal proceedings**?

Awaab Ishak – Rochdale Boroughwide Housing (RBH) + health services across the board



Awaab Ishak – Rochdale Boroughwide Housing (RBH) + health services across the board ...(cont'd)

- Senior coroner Joanne Kearsley Tuesday **15/11/2022** narrative conclusion
- Awaab died 21/12/2020 aged 2 'severe respiratory condition due to **prolonged exposure to mould in his home environment**'
- Coroner - '**evident gap**' information sharing health visitors, midwives, early help, GP, Royal Oldham hospital (A&E 19/12/2020!) + RBH?
- Lawyers accuse RBH doing **nothing** over **3 years** to treat mould growth
- Accuse RBH discrimination, racism, unfair treatment, housing people in homes 'unfit for human habitation'
- Parents 'we were left feeling **worthless** at hands of RBH'
- Coroner 'Tragic death of Awaab will & should be a **defining moment** for the housing sector in terms of increased knowledge..awareness & a deepening of understanding surrounding the issue of damp & mould'.
- 2020 father Falsal Abdullah instruct CMC to sue – RBH policy not to tackle property issues until reached an agreement with his solicitors!
- **This is a legal nonsense! Who advised RBH this was correct?**
- **What is your policy if a CMC / lawyers threaten to sue for property conditions?**

Awaab Ishak – Rochdale Boroughwide Housing (RBH) + health services across the board ...(cont'd)

- Coroner's report to prevent future deaths Coroners (Investigation) Regulations 2013 to SoS DLUHC & Health & Social Care
- 1. **June 2006 Decent Home** : definitions & guidance does **not** give any consideration to issue damp & mould, nor need for adequate ventilation
- 2. **HHSRS** data sheet for damp & mould calculates risks of incident & spread of harm & **not** reflective of current known risks to health
- 3. **No** evidence up-to-date relevant **health information** pertaining to risks of damp & mould was **easily accessible** to housing sector
- 4. Policy where disrepair claim brought **waiting for agreement** from claimant/their representative until rectifying disrepair
- 5. **Private sector** no access to Housing Ombudsman

Interim reply 13 January 2023

Awaab Ishak – Rochdale Boroughwide Housing (RBH)

- 15/11/2022 Gove 'beggars belief' CEO still in office summonsed to London to explain?
- 16/11/2022 CEO **refuses to resign**
- 19/11/2022 board **dismiss CEO**
- 12/12/2022 interim CEO, **chair & board gone 2023**, new CEO Sept.
- June 2023 **extra £15 million** for damp & mould in Greater Manchester
- 15/12/2022 RSH find RBH in breach Home & Tenant Involvement & Empowerment Standard – **serious detriment to RBH's tenants**
- RSH downgrade RBH to a non-compliant grade for governance **(G3)**
- **Failure of board** to act with appropriate degree of skill, diligence, effectiveness, prudence & foresight

Awaab Ishak – Rochdale Boroughwide Housing (RBH)

- 29/11/2022 **Housing Ombudsman letter to CEOs** about Spotlight Report on Damp & Mould (October 2021)
- 28/3/2023 **Housing Ombudsman Special Report on Rochdale Boroughwide Housing**
- <https://www.housing-ombudsman.org.uk/wp-content/uploads/2023/03/P49-RBH-FINAL-200323.pdf>
- Housing Ombudsman was witness at Awaab Ishak inquest
- RBH initial review 2021 wrong consultant, only 1 block, telephone, no visits
- 2nd review **80%** homes on Freehold Estate in Rochdale where Awaab had lived – **damp & mould!**
- s.40-41 Social Housing (Regulation) Act 2023 enables Housing Ombudsman to **instruct** landlords to measure service against guidance on issues

RSH to social landlords 22/11/2022

RSH letter to providers with more than 1000 homes 22/11/2022 –
information about how going to tackle damp & mould by 19/12/2022

1. 'Damp & mould are potential **hazards** under the Housing Health & Safety Rating System; failing to address them could lead to failure of the **Decent Homes Standard & our Home Standard**
2. All providers should have **systems** in place to ensure that their homes are free from hazardous levels of damp & mould & to **identify & deal with cases promptly & effectively**
3. As we move into **winter**, cases of damp & mould are likely to increase
4. We are therefore **seeking assurance** from all providers that they have a clear understanding & strong grip on damp & mould issues in their homes & are **addressing risks to tenants' & residents' health.**

RSH it's a form & response – is this good enough?

1. **Approach to assessing** the extent of damp & mould issues, including how assess prevalence of Category 1 & 2 damp and mould hazards?
2. Most **recent assessment** of the extent of damp & mould hazards, the prevalence of Category 1 & 2 damp and mould hazards?
3. **Action taking** to remedy any issues & hazards & ensure that homes meet the Decent Homes Standard?
4. How ensure that individual damp & mould cases **identified** & dealt with promptly & effectively **when raised** by residents

Initial results 2/2/2023

- RSH best estimate less than 0.2% most serious, 1-2% serious, 3-4% notifiable damp & mould (240,000 homes)
- RSH admits some responses poor quality responses

Full report 28/6/2023

Spotlight on Damp & Mould it's not lifestyle

<https://www.housing-ombudsman.org.uk/2021/10/26/housing-ombudsman-urges-zero-tolerance-approach-on-damp-and-mould/>

Housing Ombudsman Service

October 2021

Spotlight on Damp & Mould

- 100s of investigations – 142 landlords, 500+ evidential responses
- High uphold rate for **maladministration**
- Changes in **culture, behaviour & approach**
- Move from **reactive to proactive**
- From inferring **blame to taking responsibility**
- **Zero-tolerance approach** to damp & mould – less fatalism, loss of empathy
- **Proactive interventions** – diagnosis – actions – communication – aftercare
- Risk based, intelligence, data & complaints – **over reliance** on **reporting**
- **Disposal / regeneration** – residents not receive poorer standard of service
- With residents review **information, materials & support** – right tone
- More transparent over **mutual exchanges / visits / void periods**
- **Opportunity to capture intelligence!**

One year on follow up report Spotlight on Damp & Mould – it's not lifestyle

www.housing-ombudsman.org.uk/wp-content/uploads/2023/02/Damp-and-mould-follow-up-report-final-2.2.23.pdf

Housing Ombudsman Service

February 2023

One year on follow up report Spotlight on Damp & Mould – it's not lifestyle

- 2021-2022 severe maladministration 13 of 31 about mould & damp
- Volume of casework & findings increased 134%
- Housing Ombudsman (HOS) contacted 40 landlords – 26 responded
- **Financial** implications & restraints = barrier to change
- **35%** specific damp & mould policy, streamlined processes
- **12%** in process implementing one
- **19%** self-assessed against recommendations
- **41% have self-assessed & made no changes!**
- Prevention – risk algorithm, predictive AI for at risk homes, surveyors tools for ID cold spots, thermal bridging, high thermal bypass rates
- Potential for mould growth using humidity & temperature sensors

One year on follow up report Spotlight on Damp & Mould – it's not lifestyle ...(cont'd)

Good practice handling damp & mould reports

- Remove **sole focus** on expectation residents report
- **Retrospective risk** assessments & prioritisation of existing reports
- Dedicated apps/video calling services
- Property **MOTs**
- **Specialist** damp & mould teams
- Root cause analysis modelling
- **Dedicated** damp & mould dashboard
- Staff **training**
- **Void teams** working with specialist damp contractors

Damp & mould – Awaab’s law

- **s.42 Social Housing (Regulation) Act 2023** adds s.10A to Landlord & Tenant Act 1985 – implied covenant into force **20/9/2023 but**
- **Requires the ‘lessor’ to take particular action to reach a ‘particular outcome’ in relation to a ‘prescribed hazard’**
- Consultation 9 January – 8 March 2023 – what should it **actually mean?**
- <https://www.gov.uk/government/consultations/awaabs-law-consultation-on-timescales-for-repairs-in-the-social-rented-sector>
- 61 page document – leaving it **very late** to implement on 1/4/2024!
- Basics – complaint of HHSRS hazard, inspect within **14 days, written summary to resident 48 hours**
- **‘significant’ risk** begin works within **7 days**, complete reasonable period
- **‘emergency’ works within 24 hours**
- 3 attempts at access, record everything

Damp & mould

- **Understanding and addressing the health risks of damp and mould in the home** DLUHC : 7 September 2023 – 58 pages
- <https://www.gov.uk/government/publications/damp-and-mould-understanding-and-addressing-the-health-risks-for-rented-housing-providers/understanding-and-addressing-the-health-risks-of-damp-and-mould-in-the-home--2#key-messages>
- Updated non-statutory guidance on health impacts arising from damp & mould
- Response to Awaab Ishak inquest & coroner's report November 2022
- Pro-active approach, where remedial works necessary - carried out promptly & periodic checks (6 weeks after works) to ensure problems not recurring
- <https://www.theguardian.com/lifeandstyle/2023/feb/27/mouldy-britain-a-foolproof-guide-to-rescuing-your-home-from-damp>

Tackling damp & mould & condensation

ADVICE LEAFLET



Tackling damp, mould and condensation

Damp and condensation can cause black mould to grow in your home. It's a common problem in British homes, but we can work together to manage it.

In this leaflet:

- we explain what causes mould
- we describe the actions we can take as your landlord, and
- we offer advice on reducing condensation in your home.

Be assured that we take all cases of damp and mould seriously. We know that living in a home with mould can be bad for your health. **We will work with you to resolve damp and mould issues.**

You are welcome to phone NLM for further advice. And if you think there is a problem with the property, please call to book an inspection by our surveyor.

What causes mould

Mould grows in damp homes. So, it is important to start by working out what is causing any damp.

Your damp problem could be caused by:

- a fault with the building that needs to be repaired, or
- (more commonly) too much condensation.

You may need our help to resolve either of these problems.

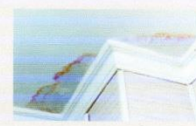


A problem with the building

A leaky roof, pipe or guttering, or a problem with the plumbing in your home or your neighbour's home can all cause water to soak into walls and ceilings.

In older buildings, some basement or ground floor flats may suffer from rising damp – where groundwater soaks up into the bricks or concrete.

A problem with the structure of the building you live in is your



landlord's responsibility. If you can see a problem like this, you should report it to us as soon as you can, so that we can investigate and take action.

Problems caused by condensation

The most common cause of damp is condensation. Condensation is the moisture that forms when warm, damp air touches a cold surface. Too much condensation can also cause mould.

As a responsible landlord, our aim is to keep your homes well maintained, including providing you with fans in your kitchen and bathroom, and an efficient heating system. These will all help you to manage condensation in your home.

In the rest of this leaflet, we offer some simple ways for you and your family to reduce condensation while you are living in your home.

If these tips aren't working for you for any reason, please call us. We will be happy to offer advice and/or to send out a surveyor to see the problem first hand.



How to reduce condensation

If your home suffers from mould caused by condensation, there are ways you can make a difference.

Your aim should be to:

- Make less moisture if you can
- Remove any condensation that forms
- Keep your rooms well aired
- Keep your home warm
- Treat any spots of black mould that appear with an anti-fungal spray.



1. Make less moisture

Everyday activities put moisture into the air. There are steps you can take to limit this.

- Avoid drying washing indoors and especially on radiators. If you have no option, dry your washing in the bathroom with the door shut and the fan running, or with a window open. Call us if your fan is not working or if your window will not open.
- Keep the filters of your tumble dryer clean and regularly empty any water collected. Your machine will get warm when it's in use, so leave a gap around it for air to circulate.



- Cover boiling pans and turn off kettles quickly. Keep kitchen doors shut while cooking.



- Keep bathroom doors shut when you are showering or taking a bath.
- Put the cold water in first, if you are running a bath.

Tackling damp & mould & condensation ...(cont'd)

2. Remove condensation

When drops or pools of water form on windows and cold surfaces, be ready to remove them.

- Wipe down windows and sills, or use a rechargeable window vacuum cleaner, to remove condensation and pools of water. Ideal times to do this are first thing in the morning and after cooking in the evening.



- Reduce the moisture left on tiling and shower screens, after showering, by giving them a quick wipe down.

- Running a dehumidifier will remove excess water and make your home feel warmer. A larger version is pictured, but you can also buy small ones to focus on a particularly damp spot. Call us for advice on running a dehumidifier.



3. Keep rooms well aired

You need fresh air to move freely around your home. Mould will tend to grow in places where damp air gets trapped.

- Always use your bathroom and kitchen fans until the steam has gone. Opening a window will speed this up. Keep your fans clean – they won't work properly if they are clogged up with dust. Call us if your fans are not working.



- Keep curtains or blinds open for at least four to five hours every day, so that trickle vents can work properly and to stop mould growing around your windows.



- Keep windows around your home open for a while every day (five to 10 minutes is enough) and always keep trickle vents open. Call us if your windows won't open, or if a trickle vent is blocked.



- Pull any furniture away from the wall to leave a gap for air to circulate. Avoid putting furniture right next to external walls.



- Try not to overfill cupboards and wardrobes. Opening the doors for a while each day can help remove stale air.

4. Heat your home

In the winter, try to keep every room in your home heated to at least 15 degrees during the daytime.

If you are struggling to pay your energy bills, you can:

- contact your energy provider to agree a plan you can afford, and/or
- go to www.turn2us.org.uk to search for grants and to check you are getting all the benefits you can claim.

If you are in crisis, go to your Council's website, to check out the hardship support they offer. You may be able to get vouchers to help you buy food or essential



household items, or to pay energy bills.

You are always welcome to call NLM for support.

5. Treat spots of mould

It's important to treat any mould that appears quickly, so that it doesn't spread.

Wipe away spores using a mould cleaner, while wearing gloves and a mask, and keeping the area well aired as you do this. This is to avoid breathing in the spores. Throw away the cloth afterwards.



Once the mould is removed, painting walls and ceilings with anti-mould paint can stop mould returning for several years. Call us if you need further advice on treating your home with mould cleaner or repainting.

NLM:
We're here to help

We hope you have found this leaflet useful.

If you have problems with damp and condensation, please do report this to NLM. We need to know about it, so that we can take the right action.

Contact details

North London Muslim Housing Association

15b-15c Urban Hive, Theydon Road
Upper Clapton, London E5 9BQ

Website: www.nlmha.com

Email our Customer Service Team at:
customer.services@nlmha.com

Report your repair by email at:
maintenance@nlmha.com

If you don't have access to email, you can phone in your query on **020 8815 4200**, choosing '1' for repairs or '2' for all other services.

Office hours: Our Customer Service Team answer calls on weekdays from 9:30am to 5:30pm, but we are closed for lunch from 1-2pm. We are also closed during public holidays.

Out-of-hours emergencies

Gas leaks
National Grid 0800 111 999

Water leaks/burst pipes
Thames Water 0848 920 0800

Gas heating/hot water (24 hours)
Robert Heath Heating
020 3667 4584

St Andrews heating (E.ON)
0345 302 4312

Other out-of-hours repairs
North London Muslim HA
020 8815 4200



The Charter for Social Housing Residents – White Paper – 17/11/2020



The Charter for Social Housing Residents – Chapter 1 – To be safe in your home – implementation

- **From 1/10/2022** – Smoke & Carbon Monoxide Alarm (England) Amendment Regulations 2022 SI 707
- <https://www.legislation.gov.uk/uksi/2022/707/contents/made>
- All social rented homes in England must have smoke alarms installed + a carbon monoxide alarm in any room used as living accommodation where fixed combustion appliance of any fuel type (other than a gas cooker)
- <https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords/the-smoke-and-carbon-monoxide-alarm-england-regulations-2015-qa-booklet-for-the-private-rented-sector-landlords-and-tenants>
- If alarms break **must be repaired / replaced once notified**
- Regulations **do not apply** to shared accommodation with the landlord or landlord's family, long leases, student halls of residence, hostels and refuges, care homes, hospitals and hospices, other accommodation relating to healthcare provision
- Regulations **do not apply** to owner occupiers or owner occupiers living in shared-ownership homes

Social Housing (Regulation) Act 2023

- **S.10 designated lead on safety** – senior individual? **Who is this?**
- Duty to monitor & inform RSH if breach
- Must have '**sufficient authority & time**' to fulfil role
- If **not appointed** or fail discharge duties = grounds RSH enforcement
- Does **not absolve** board of potential liability
- From **20/7/2023 s.11 Social Housing (Regulation) Act 2023** amends s.122 Housing & Planning Act 2016 to include **social housing**
- Electrical Installation Condition Report by competent & qualified person every 5 years (in PRS since 1/7/2020)
- <https://www.electricalsafetyfirst.org.uk/find-an-electrician/periodic-inspection-explained/guide-to-condition-reports/>
- **Fire Safety Act 2005 as amended (common parts) & best practice**
- <https://www.electricalsafetyfirst.org.uk/media/mtllsfls/social-rented-sector-policy-paper-march-2021.pdf>

Social Housing (Regulation) Act 2023 - Tenant Satisfaction Measures – collecting since 1/4/2023

MBL = measured by landlord / TPS = tenant perception survey

- TP01: Overall satisfaction – taking everything into account – TPS
- TP02: Satisfaction with repairs in last 12 months – TPS
- TP03: Satisfaction with time taken to complete most recent repair – TPS
- RP01: Homes that do not meet the Decent Homes Standard – MBL
- RP02: Repairs completed within target timescale – MBL
- TP04: Satisfaction that the home is well maintained and safe to live in – TPS
- BS01: Gas safety checks – MBL
- BS02: Fire safety checks – MBL
- BS03: Asbestos safety checks – MBL
- BS04: Water safety checks – MBL
- BS05: Lift safety checks – MBL
- Electrical safety checks – MBL (see s.11 – where is this?)

RSH pilots for consumer regulation inspections

RSH 1st wave pilots for consumer regulation inspections – 12/1/2023

- <https://www.gov.uk/government/publications/reshaping-consumer-regulation-our-implementation-plan/reshaping-consumer-regulation-our-implementation-plan>
- Bernicia Homes / Brunelcare / Peaks & Plains / Guinness Partnership / Torus62 / Eastbourne / Folkestone & Hythe

RSH 2nd wave pilots for consumer regulation inspections – 4/4/2023

- Aster Group / Leeds Federated Housing Association / Accent Group / Wythenshawe Community Housing Group
- <https://www.gov.uk/government/news/rsh-launches-second-round-of-consumer-inspection-pilots>

**RSH seeking voluntary pilots from small providers (less than 1000 homes)
– 11/7/2023**

White Paper 17/11/2020 – Chapter 3 – complaints

- Complaints dealt with more **quickly (by landlord & ombudsman)**
- From 1/10/2022 s.160 Building Safety Act **removes the 'democratic filter' or 'designated person'** – scrutiny panel or 8 week rule
- **Complaint Handling Code 2020 (revised April 2022)**
- <https://www.housing-ombudsman.org.uk/wp-content/uploads/2020/11/Complaint-Handling-Code.pdf>
- If landlord fails = **'complaint handling failure order'**
- **Name landlords** who are guilty of maladministration
- Communication campaign **Make Things Right 6/3/2023**
- <https://socialhousingcomplaints.campaign.gov.uk/>
- Four Million Homes <https://www.fourmillionhomes.org/>
- Independent review of Ombudsman & relationship with RSH

Housing Ombudsman – common themes?

- February 2021 **Cold comfort** – Spotlight on complaints about heating, hot water & energy in social housing. Thematic report
- <https://www.housing-ombudsman.org.uk/wp-content/uploads/2021/02/Spotlight-on-heating-and-hot-water-report-final.pdf>
- 18/11/2021 **Abri Homes** – vulnerable resident, severe maladministration, always leaking shower, poorly handled decant, inadequate compensation, poor handling of complaint
- <https://www.housing-ombudsman.org.uk/2021/11/18/severe-maladministration-finding-on-abri-case-for-significant-detriment-to-vulnerable-resident/>
- 12/5/2022 **Clarion** – severe maladministration, vulnerable resident, failure to engage for 15 months, sometimes no hot/cold water for months, rats, communications failure. Paragraph 50 (systemic failure) investigation
- <https://www.housing-ombudsman.org.uk/wp-content/uploads/2022/05/Clarion-severe-mal-summary-201914233-final.pdf>

Housing Ombudsman – common themes? ...(cont'd)

- 1/11/2022 **PA Housing** – severe maladministration, repeated failings dealing with leak, disabled resident had to sleep in living room more than 84 weeks, failed to reimburse costs, pay compensation, update, poor communications
- <https://www.housing-ombudsman.org.uk/2022/11/01/ombudsman-finds-severe-maladministration-for-pa-housings-repeated-failures/>
- 13/3/2023 **Catalyst Housing** – severe maladministration 'routinely failed to recognise formal complaints' – aspects of service were arbitrary, disjointed and concerning
- <https://www.housing-ombudsman.org.uk/2023/03/13/ombudsman-issues-special-report-on-catalyst-housing-with-repeated-failures-indicative-of-wider-service-failure/>

Housing Ombudsman – common themes? ...(cont'd)

- 29/6/2023 **Southern Housing** complaint handling maladministration rate rose from 56% to 81% in the past year
- <https://www.housing-ombudsman.org.uk/2023/06/29/sharp-increase-in-maladministration-prompts-ombudsman-to-launch-special-investigation-into-southern-housing/>
- 27/7/2023 **L&Q special report** 'prolonged period of decline' - £142,000 compensation, 103 determinations January to June 2023, 30 local authority areas. Severe maladministration rate of 13% (national average of 6%): disrepair, poor repair services, mishandling of service charges, failures supporting residents experiencing ASB
- Staff suggest send a supervisor instead of a surveyor, because 'at least he looks like the surveyor'. L&Q needed to take action so not to 'appear on ITV News again.' L&Q told resident it would pay compensation only if they agreed to a confidentiality clause in their tenancy agreement
- <https://www.housing-ombudsman.org.uk/2023/07/27/ombudsman-orders-lq-to-pay-142000-in-compensation-after-finding-prolonged-period-of-decline-in-special-investigation/>

Housing Ombudsman – common themes? ...(cont'd)

- 3/10/2023 **A2 Dominion** – 2 cases severe maladministration, compensation £8000, ordered CEO apologise personally. First – leak to roof, damp & mould for 16 months, mice infestation 18 months, poor record keeping, complaint handling outside Code, failed up-date. Second – water into vulnerable residents bedroom 13 months, delay in scaffolding, failed update, poor complaint handling' A2 Dominion to review another 5000 cases!
- <https://www.housing-ombudsman.org.uk/2023/10/03/a2dominion-reviews-5000-cases-after-failing-two-vulnerable-residents-living-in-damp-and-mould/>
- 5/10/2023 **Peabody Trust** – 2 cases severe maladministration, compensation £8300. Ordered CEO apologise personally. First – 2 years intermittent hot water (during Covid19!), blame resident, contractors not keeping appointments, poor communications, blaming staff leave, poor complaint handling. Second – leak to kitchen 18 months, leak to other rooms 28 months, related internal repairs 3 years later, vulnerable family, poor complaint handling
- <https://www.housing-ombudsman.org.uk/2023/10/05/three-counts-of-severe-maladministration-for-peabody/>

Another coroner's report – Sylvia Pollitt

- Senior Coroner Alison Mutch : Greater Manchester South :19/7/2023
- Coroner's report to prevent future deaths Coroners (Investigation) Regulations 2013 to **L&Q**
- Narrative conclusion elderly resident **died from hypothermia** when her request for engineer visit to check boiler didn't happen
- Contractor **Liberty unable to contact, shut case did not inform L&Q**
- Sylvia discovered dead 1/12/2022

Matters of concern

- Service Level Agreement (SLA) said if no contact with tenant referred back to L&Q for welfare check to ensure vulnerable tenants safe & well
- **No audit** system in place to ensure SLA worked – one-off or systematic?
- **No system to capture outcome** each referral
- L&Q to respond by 13/9/2023

Housing Ombudsman – common themes? ...(cont'd)

- Poor record keeping & communication – systemic failures
- Heating, hot water & energy failures – thematic report
- Decanting & for how long & where – no ownership
- Inadequate compensation – it's 'small change'
- Vulnerable residents – not following policy or too rigid application
- Managing agents & confusion – who is responsible for what
- Poor complaint handling – systemic failures
- Damp & mould – stop blaming occupiers
- Why can't a director take responsibility – visit, assess, order works immediately?

Housing Ombudsman (HOS) – Complaint Handling Code

Complaint Handling Code April 2022

- <https://www.housing-ombudsman.org.uk/wp-content/uploads/2022/03/Complaint-Handling-Code-Published-March-2022-1-1.pdf>
- Use of words 'must' = mandatory, 'should' = discretion
- If deviate from Code explain why in self-assessment
- **Complaint** = 'an expression of dissatisfaction, **however made**, about the standard of service, actions or lack of action by the organisation, its own staff, or those acting on its behalf, affecting the individual resident or group of residents'
- **More than one avenue to raise a complaint**
- Policy / process / way to complain **clear & accessible format**
- Acknowledge & log **Stage 1** within **5 working days**
- Investigation impartial / balanced, **response within 10 working days**
- **Stage 2 issued** within **20 working days** of escalation
- 3 stages at a stretch!
- Housing providers **self-assess** own complaints mechanism against this Code

Housing Ombudsman (HOS) – s.40-41 Social Housing (Regulation) Act 2023

- The Act **places Complaint Handling Code** on **statutory footing**
- Landlords **duty to comply** with Code / HOS **duty to monitor** compliance
- HOS must consult with member landlords, residents & RSH
- With Local Government & Social Care Ombudsman : 28/9/2023-23/11/2023
- <https://www.housing-ombudsman.org.uk/complaint-handling-code-consultation-2023/>
- Expect into force **April 2024**
- Residents tell HOS improvements **do not always follow** a determination
- New type of order if HOS identify shortcomings on particular theme to remedy beyond individual complaint
- **Order review policies & practice** from September 2023
- New power to issue **statutory good practice guidance** – later 2024

Housing Ombudsman 2024

- Spotlight on : **Attitudes, respect & rights:** Relationship of Equals 23/1/2024
- <https://www.housing-ombudsman.org.uk/wp-content/uploads/2024/01/ARRRoE-22012024-FINAL.pdf>
- Call for Royal Commission
- Statutory definition of 'vulnerability' & general needs
- **Vulnerability** strategy, defined, who assesses, review process
- Recognise Equality Act, Human Rights Act, Care Act not optional
- **'Human centric'** service provision
- Recognition 'vulnerability' can be short-term, grief, distress, human-centric provision of services – **recognise, respond, record**
- Specific **'reasonable adjustments'** policy
- 'Resident of the Future' demographic, planning for next 10 years
- Statutory **duty to co-operate** with agencies such as health
- Minimum **staff training** customer care, mental health, disability, dementia

Social Housing (Regulation) Act 2023

- Transform RSH **proactive, proportionate, outcome-focused, risk based**
- **S.26** Social Housing (Regulation) Act 2023 **removes 'serious detriment test'**
- EHS 2019/20 found **59%** of social renters who complained were not happy with the response to their complaint
- **Consumer standards** to be policed in same way as economic standards
- RSH set-up **advisory panel** of tenants, social landlords, lenders, councils, GLA, Homes England & housing secretary + others?
- Information & advice to RSH about it's work that 'could have a significant impact' on social landlords
- **Under-performing** social landlords subject to '**OFSTED-style**' inspections
- RSH only have to give **48 hours notice not 28 days**
- Tenants given 24 hours notice of such inspection
- Magistrates can issue **warrant** for RSH to carry out an inspection 'using force if necessary' if access refused / tenant absent

Decent Homes Standard 2001 updated 2006 – this is 18 years out-of-date!

- Meets the current statutory **minimum** standard for housing
- **No Category One hazards – Homes (Fitness for Human Habitation) Act 2018!**
- Is in a **reasonable** state of repair.
- 1+ key building components **old & need replacing or major repair**
- 2+ other building components & need replacing or major repair
- It has **reasonably modern** facilities and services
- Dwellings lack 3+ of the following
- A **reasonably modern kitchen** (20 years old or less)
- A kitchen with adequate space & layout
- A **reasonably modern bathroom** (30 years old or less)
- An appropriately located bathroom and WC
- **Adequate** insulation against external noise
- **Adequate** size & layout of common areas for blocks of flats
- It provides a reasonable degree of thermal comfort
- Effective insulation & efficient heating
- **This is a standard NOT law!! Who enforces?**

Surviving Squalor : ITV September 2021 : Lewisham Homes



The Charter for Social Housing Residents – Chapter 5 – implementation

Review Decent Homes Standard (DHS)

- Part 1 Feb-Sept 2021 is it still suitable & effective / need up-dating?
- Ventilation, home security, thermostatic mixer valves, window restrictors, electrical safety, refuse management, water efficiency
- March 2022 Part 2 of review – should it apply in PRS consulting until 14/10/2022
- **June 2023 updated list of items** which must be kept in a reasonable state of repair for a home to be considered 'decent'
- **Updated list of services & facilities** that every property must have to better reflect **modern** expectations for a 'decent' home?
- Whether DHS is right standard on **damp & mould** to keep residents **safe**?
- Updates **how condition** of building components are **measured** – to make sure that buildings which are not fit for use cannot pass the standard
- Minimum Energy Efficiency Standard for the **social rented sector**
- 19/1/2024 Health and Social Care Committee demanded urgent action from the Government to protect tenants who live in poor quality homes that can have a "catastrophic impact" on their health

Social Housing (Regulation) Act 2023

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Social Housing (Regulation) Act 2023

Performance improvement plans (PIPs?)

- If social landlords fail to meet standards, risk will fail or if fail to provide documents / information been asked for
- Social landlord prepare a plan on how address any issues
- Tenants can requests to see copy of PIP
- If social landlord fails to comply – enforcement (ERA) or fine
- Social landlord can appeal PIP notice to High Court

Emergency Remedial Action (ERA)

- RSH power to carry out emergency works / bill social landlord
- If property below standards 'an imminent risk of serious harm'
- Tenants given 24 hours notice of such inspection
- Magistrates can issue warrant for RSH to carry out an inspection 'using force if necessary' if access refused / tenant absent
- RSH power to **fine up from £5000 maximum to unlimited!**

Social Housing (Regulation) Act 2023

- **Social Housing Quality Resident Panel** launched 29/3/2022
- Supported by national survey 5000 residents between March – April 2022
- Balanced demographic of 250 residents, meet 3 times per year, at least 6 meetings
- Focused on **limited brief = title**
 1. Review Decent Homes Standard
 2. How to raise complaints & have confidence in system
 3. Review training & qualifications for social housing staff
 4. Access to information scheme for tenants
- **Social Housing Professionalization Review : 18/1/2022**
- Chartered Institute of Housing, TPAS, Sanctuary Housing & North Star Housing Group
- **s.21 Social Housing (Regulation) Act 2023 - 'competency & conduct'**
- 'senior housing executives' require foundation degree or level 5 qualification
- 'senior housing managers' require a level 4 qualification in housing management

Social Housing (Regulation) Act 2023

- **Regulator of Social Housing 25/7/2023 – 17/10/2023**
- Consultation on **draft consumer standards**
- 48 pages of standards / 18 pages of Code of Conduct
- Required outcomes (RO) & Specific Expectations (SE)

Safety & Quality

- **Stock Quality – RO** accurate, up-to-date & evidenced understanding of condition of homes reliably informs provision of good quality, well-maintained & safe homes. **SE** accurate record of individual properties, evidence of condition of stock, **physical assessment of all homes**
- **Decency – RO** all reasonable steps to ensure health & safety for tenants & in communal areas
- **Repairs, maintenance & planned improvements – RO** effective, efficient & timely (dropped Right First Time as inconsistent application!)
- **Adaptations – RO** assist tenants seeking adaptations to access appropriate services

Eastfields Estate, Mitcham : Clarion



Eastfields Estate, Mitcham : Clarion

- <file:///C:/Users/User/Downloads/eastfields-estate-merton-lessons-learned-and-next-steps.pdf>
- Stock transfer from Merton 2010
- 466 homes, half owned via Right to Buy
- Estate at end of life, £1.3 billion regeneration
- 2014 RSH waiver on Decent Homes Standard
- 2021 planning approval Phase one
- 2021 £72 million forfeit as scheme not financially viable
- 2022 RSH has provided no 'convincing evidence' that Clarion's handling of issues on the Eastfields Estate did not breach standards
- How bad does it have to be for 'intervention'?

Surviving Squalor : ITV September 2021 – Eastfields Estate, Mitcham : Clarion



Is social housing being targeted by 'no-win-no-fee claims farmers?'

Inside Housing 1/2/2022 report

- February 2021 – 8 HAs hire lobbyist Connect PA = **'influencing strategy'** to **'reduce the capacity of tenants'** to pursue **'inappropriate'** disrepair claims
- Led by Riverside HA + ForHousing, Onward, Prima, Regenda, Salix Homes, Shepherd's Bush HA, Torus
- Riverside also chairing 'best practice group' = 34 housing providers
- Riverside managing **353 live housing conditions claims** – projected risk **£3.55 million** based on average cost £11,000 per claim settled
- Riverside claim 'Housing associations have been working to settle these claims outside of court for a number of years in good spirit – with a view that **reputational risk** outweighed the **financial risk**'
- Riverside reckons way forward = **'fixed-cap on claimants' legal costs'**
- Less attractive for Claims Management Companies – **CMCs** & lawyers
- (Like 31/5/2021 clamp down on whiplash claims)
- Government going to do this but 2 years away

Is social housing being targeted by 'no-win-no-fee claims farmers?' ...(cont'd)

Inside Housing 14/3/2022 reply

- **Giles Peaker** : partner Anthony Gold & blogger Nearly Legal
- Giles responds with '**weary deja vue & amazement**'
- '**Do the repair work when notified of an issue**'
- Obvious – but many seem **incapable** of putting into practice
- If works cost – valid claim where landlord has failed to meet it's obligations + claimant costs = **poor litigation conduct by landlord**
- Lobby to **ban** solicitors paying referral **fees to CMCs**
- Refer CMCs to **Financial Conduct Authority**
- Refer solicitors taking claims from unregistered CMCs to **Solicitors Regulation Authority**

Is social housing being targeted by 'no-win-no-fee claims farmers?' ...(cont'd)

Inside Housing 14/3/2022 reply

- Raise **internal compensation rates** for claimants to the level a court would award housing conditions claim – include 'special damages'
- Compensation offers from social housing providers **appallingly low**
- Housing Ombudsman awards for malad. typically **25% less**
- Government reinstate housing conditions claims in scope **legal aid**
- **Do repair work** when notified of an issue
- Even when a claim & settlement **specifying works & deadline (Tomlin order)**– many claims **still go to enforcement**
- Most straightforward way for social housing provider to avoid claims is to be **competent in fulfilling basic role & legal obligations**
- Not about reputational management but about **getting it right!**

Damages

Read-v-Notting Hill Housing Trust : Bow County : 13 June 2013

- AST ground floor 2 bed flat – rent **£269.00 per week**
- **Rats** infestation reported to Notting Hill HT & Environmental Health but nothing done **fix holes in floor where ingress**
- **Rising damp, defective boiler intermittent hot water**
- One year later offered alternative accommodation
- Judge held **reasonable period** to block holes = 28 days from 1st report
- Damages **80% of rent** from then until offer of alternative = 60 weeks – **£13,872** + another 20% of rent after refused offer – £953.00
- General damages – £14,825 + special damages £1000
- Minor damage to property – £150, interest on damages – £940
- Beaten her Part 36 offer – 10% uplift – £1661 + further interest £130
- **Global damages – £18.406**

Damages

- If tenant can show landlord in breach of **contract, tort or statute** such as to have caused them **personal injury or damage to property or loss**
- Damages for disrepair maybe measured by comparing difference in value to tenant between unrepaired & repaired state - **diminution of value**
- If conditions **so bad** tenant has to **move out / be decanted**, can claim cost of temporary accommodation (Calabar Properties Ltd.-v-Stitcher : Court of Appeal 1993)
- Can claim damages for **consequential loss**, i.e. property damaged / lost, ill-health etc. (Jackson-v-Horizon Holidays : Court of Appeal 1975)

Damages

General

- Both contract & tort, unquantifiable & can also claim for harm, loss of enjoyment, pain & suffering, physical injury & inconvenience

Special

- Both contract & tort – damages that are identifiable & quantifiable

Exemplary

- Tort. Where defendant's conduct calculated by him to make a profit that may exceed compensation payable to claimant

Aggravated

- Tort. Compensation for especially severe suffering, outrage & indignation at way claimant has been treated

Damages for disrepair ...(cont'd)

Various residents of Paragon Estate-v-Notting Hill Genesis 2022

- **Modular** build by Berkeley Homes 2006 – 6 blocks, **1000 + residents**
- Long-standing disrepair common parts – leaks & rotten roof terrace
- Individual disrepair in some of flats, serious fire safety issues
- December 2018 scaffolding + cover remained blocking natural light
- Fire alarms faulty, frequently sounded & ignored, waking watch
- October 2020 few days' notice – had to leave – temporary accommodation
- **13 tenants group claim** disrepair, fitness breaches, nuisance, breach of quiet enjoyment & unlawful eviction
- **Settled for £165,000** general & special damages + home loss payments
- August 2023 NHG to spend **£72 million** on upgrade
- £36m on installation of sprinkler systems, upgraded mechanical, engineering & public health systems & completely refitted homes
- Complete internal refurbishment to all areas, including new lighting, ceilings, furniture, flooring, and landscaping

Damages for disrepair ...(cont'd)

Dezitter-v-Hammersmith & Fulham Homes : Central London CC : 7/11/2023

- Ms Dezitter secure tenant since May 2010 – disrepair from start
- Cracks to walls & ceilings, ill-fitting & draughty doors & windows, damp & mould, lights hanging from ceiling intermittent boiler pressure
- Council raised no limitation defence, did not attend, no evidence, no witness statement – disrepair 3 time bands
- One : 14/6/2010 – 24/12/2013 further deterioration from leaking roof
- Two : 24/12/2013 – 20/3/2020 (new Fitness law into force)
- Three : 20/3/2020 – 7/11/2023 (new fitness law to all tenancies in existence)
- One : damages 35% of rent – £8000
- Two : damages 40% of rent – £16,200
- Three : damages 100% of rent – £24,786 (property unfit for human habitation – tenant derived no value from tenancy)
- **Global damages £48,786 + 10% uplift – £53,665**

Surviving Squalor : ITV September 2021 – Regina Road, Croydon



Homes (Fitness for Human Habitation) Act 2018



Fitness for Human Habitation

- The definition **is archaic : Artizans & Labourers Dwellings Act 1868.**
- **S.12 Housing of the Working Classes Act 1885** 'for letting for habitation by persons of the working classes a house...there shall be implied a condition that the house is, at the time of the commencement of the holding, in all respects reasonably fit for human habitation.'

s.8 Landlord & Tenant Act 1985

- 1) the premises are fit for human habitation on the date of letting; and
- 2) that the premises will be kept fit for habitation, by the landlord throughout the duration of the tenancy.

Exceptions

- Tenancy is for a **fixed term of 3 years or more** & it is **expressly agreed** the tenant will put premises into a fit condition (caveat emptor) can contract out
- Rent is less than **£80.00 per year in London or £32.00 per year elsewhere**
- This had not been changed since the **Housing Act 1957!**

Old-v-New Fitness for Human Habitation?

- Out-of-date – **modern standards**
- Landlords' could easily avoid – **implied covenant**
- Reflects old 'contract' freedoms – **statutory intervention**
- Council tenants couldn't use own environmental health department – **HHSRS / civil law & Pre-action protocol**
- Case law / precedent arguments about 'repair'-v-'improvement' / 'relevant defect' – court can order '**works**'
- Some housing stock is very old / inefficient / expensive – **need to invest in stock**
- Tenants get minimum standard – **customers expect more**

Homes (Fitness for Human Habitation) Act 2018 – England

- 19 January 2018 Karen Buck : Homes (Fitness for Human Habitation & Liability for Housing Standards) Bill.
- 20 December 2018 : Royal Assent **Homes (Fitness for Human Habitation) Act 2018**
- Into force **20 March 2019** for all **new tenancies of less than 7 years**
- Applies to all tenancies that **began as fixed term** but became periodic after 20 March 2019
- Applies to **all** periodic & fixed term tenancies **less than 7 years** in existence on **20 March 2020 (retrospective!)**
- Amends Landlord & Tenant Act 1985 by inserting **new s.9A, s.9B and s.9C**

Homes (Fitness for Human Habitation) Act 2018 – England ...(cont'd)

- s.9A(1) **implies** into any tenancy agreement a covenant by landlord that the house / dwelling (cannot contract out)
- (a) is **fit for human habitation** at the time the lease is granted or otherwise created or, if later, at the **beginning** of the term of the lease, and
- (b) **will remain** fit for habitation **during** the term of the lease
- The obligation extends to the dwelling and to all parts of the building in which the landlord has an interest (i.e. **common parts like s.116 Housing Act 1988**)

Homes (Fitness for Human Habitation) Act 2018 – England ...(cont'd)

Exceptions

- tenancies / leases **more than 7 years**, **licences** to occupy
- unfitness caused by **tenant's failure** to behave in a tenant-like manner or from tenant's breach of covenant (like **refusing access**)
- landlord **not obliged to rebuild / reinstate** in case of destruction by fire, storm, flood or other inevitable disaster – insurance
- landlord **not obliged** to maintain or repair anything tenant is **entitled to remove** from dwelling (their own improvements)
- landlord **not obliged** to carry out works or repairs that would put him in **breach of any enactment** (i.e. planning permission)
- where required works **need consent** of third party & landlord reasonable endeavours to get consent but failed (head landlord)

Homes (Fitness for Human Habitation) Act 2018 – England ...(cont'd)

s.10 in determining whether house or dwelling is unfit for human habitation regard shall be had to its condition in respect of:

- repair
- stability
- freedom from **damp**
- natural lighting
- **ventilation**
- water supply
- drainage & sanitary conveniences
- facilities for preparation & cooking of food & for disposal of waste water
- **any prescribed hazard** (any of the 29 HHSRS hazards in HA2004) &
- shall be regarded as **unfit if and only if it is so far defective** on one or more of those matters that it is **not reasonably suitable for occupation in that condition**
- **As at January 2024 there is no higher case law yet!**

Homes (Fitness for Human Habitation) Act 2018 – England ...(cont'd)

- **S.239 Housing Act 2004** provides a local **housing** authority with **powers of entry** where they consider that **inspection** of any premises is necessary in order to carry out its functions re HHSRS
- This power **can be delegated** to another i.e. housing association
- Landlord & Tenant Act 1985 s.9A(7) and (8) imply a covenant by the tenant that the landlord or person authorised by landlord **may enter the dwelling to inspect at reasonable times of the day after giving 24 hours notice in writing**
- **So if genuinely refused access – stops any enforcement?**
- Landlord's liability for fitness will not start until he has been given **notice** and has a had a **reasonable period** to **rectify the unfitness**
- **Usual law – has tenant informed landlord of possible defect?**

Housing Health & Safety Rating System HHSRS Housing Act 2004 from 1/4/2006

- A dwelling should be designed, constructed and maintained with non-hazardous materials and should be free from unnecessary and avoidable hazards; and where hazards are necessary or unavoidable, they should be made as safe as reasonably practicable
- 29 different hazards
- Category 1 – local authority **must** issue – improvement, hazard awareness notices, prohibition order
- Category 2 – local authority **may** issue – improvement, hazard awareness notices, prohibition order, demolition
- See summaries of hazards & their effect on health at
- <https://www.estateagenttoday.co.uk/pdf/guides/Fixflo-HHSRS-Checklist.pdf>

Hazards who is responsible?

- <https://www.electricalsafetyfirst.org.uk/guidance/safety-around-the-home/kitchen-safety/> BS7671



Housing Health & Safety Rating System HHSRS

- HHSRS replaced old fitness test s.604 HA1985 – binary – pass or fail
- Scoring system prescribed **HHSRS (England) Regulations 2005 SI 3208 + Operating Guidance**
- **Tenure neutral** but mostly used in **PRS** where worse standards
- Prosecution if enforcement not work
- HA2016 in **England** councils can issue civil penalty up to £30,000, if ignore Improvement notice or Prohibition order, banning orders, rent repayment orders
- See **Safer Renting** at <https://ch1889.org/safer-renting>
- After **Grenfell Tower fire** 14/6/2017 apparent guidance focused risk hazards **within individual dwelling** / not cover cladding / common parts
- Addendum to operating guidance
- But HHSRS is **18 years out-of-date & based on data from 2002!!**
- **Partnership briefings with environmental health / PRS enforcement?**

HHSRS Category One hazard enforcement

L.B Newham-v-Chaplain Ltd. : City of London Magistrates Court : 18/10/2023

- Lumiere Building – 71 flats with **dangerous cladding**
- Newham find cladding = **Category One** hazard issued **improvement** notice September 2020 requiring remediation no later than 31/3/2021
- Works actually started May 2021 – completed February 2022
- Deputy Chief Magistrate found against Chaplain – **‘no reasonable excuse for delay’** – they argued lack of funding / resources – **failed** defence
- Sentencing 31 October 2023 – **fined £30,000 + costs of £30,000 + £190** victim surcharge for failing to meet a deadline to remove dangerous cladding from its Lumiere building at 544 Romford Road, London E7

Housing Health & Safety Rating System

HHSRS ...(cont'd)

HHSRS Hazards

- Damp & mould
- Excess Cold
- Asbestos
- Biocides
- Electrical Hazards
- Excess heat
- Fire
- Uncombusted fuel gas
- Personal hygiene, Sanitation & Drainage
- Lighting
- Noise
- VOC
- Explosions
- Water supply
- Food Safety
- Entry by intruders
- Crowding & space
- Domestic hygiene, Pests & Refuse
- Falls associated with baths
- Falls on the level
- Falling on the stairs
- Falling between levels
- Carbon Monoxide
- Lead
- Flames, hot surfaces
- Collision & entrapment
- Structural collapse & falling elements
- Position & operability of amenities

A greener place Man gwyrdach

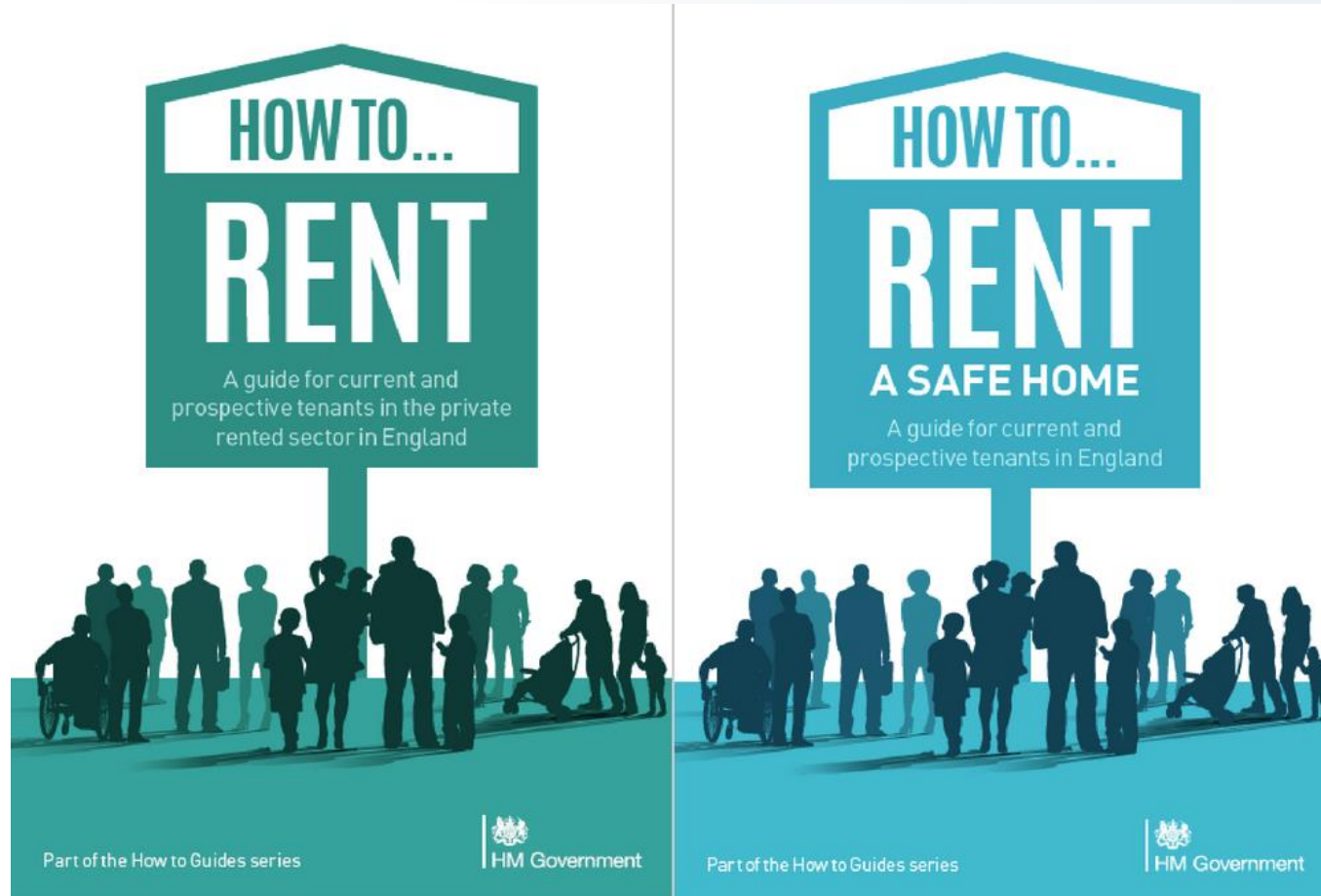


Housing Health & Safety Rating System HHSRS – review

- 2010 survey of PRS by DCLG found 85% landlords **not heard** of HHSRS
- 2015 rejected calls for quality standard but layperson's guide
- **2018 How to Rent a Safe Home (updated December 2020)**
- October 2018 – Government announce review of HHSRS – update + minimum standards for health & safety – RHE Global research
- **Summary report : outcomes & next steps for review : 7/9/2023**
- Over simplifying, not based updated evidence, category 3 + traffic lights, amalgamate hazards (21 not 29), 'occupier behaviour' (sounds like 'life-style'!), reduce burden on landlords / professionals
- No regulations until Decent Homes Standard review completed
- Read David Ormandy : 'Dumbing down & weakening HHSRS'
- <https://www.lag.org.uk/article/214325/dumbing-down-and-weakening-the-hhsrs>

How to Rent : 2/2/2023.

How to Rent a Safe Home : 10/10/2020



Clear, plain language contracts tenancies / leases / handbooks



Contracts / tenancies / leases / handbooks

- Are we sure everyone understands contents?
- What size font? What use of pictorial?
- Do we 'customise' for particular groups?
- Literacy issues, signing, makaton, Easy Read
- English not first language
- Consumer Rights Act 2015 (unfair terms)
- Settling in visits and pro-active reviews?
- Does digital reach out to or suit everyone?
- What about those who don't have access / want to talk to a real person by phone or in person?

Unfair Contract Terms

Blyth Valley Council 7/6/2002 = Inside Housing

- Tenant complaint about single clause - Housing Aid centre questioned term
- **Seemed to make tenant responsible for any damage to home no matter who caused it.**
- OFT recommended change to 10 clauses.
- Blyth Valley / Plain English Campaign / OFT
- Deletion of legal jargon
- Requirement 24 hours notice in writing before visiting
- Clarification of when rent reviews to take place

Cody-v-Philips West London CC 2005

- Standard AST agreement = **clause preventing any set-off**
- Proceedings for rent arrears / counter-claim for damages for disrepair
- Court struck out no set-off clause = breach 1999 Unfair Terms Regulations
- Now **Consumer Rights Act 2015 Schedule 2. Part 1 paragraph 2**

Promises, promises, promises

Arnold-v-Greenwich LBC : 1998 : High Court

- An express term in tenancy - council would '**maintain the dwelling in good condition** & repair'
- Tenant complained - damp & mould growth from condensation, smells from refuse bin below flat, noise nuisance from use communal rubbish chute
- Council debarred from defending
- General damages of £8750 for discomfort & inconvenience for 6 years.

Promises, promises, promises ...(cont'd)

Welsh-v-Greenwich LBC : Court of Appeal : 4/8/2000

- Tenant's home = 3 external walls no thermal insulation Condensation = severe black spot mould & dampness
- Tenancy agreement **still** provided landlord would '**maintain dwelling in good condition** & repair'.
- Judge hold council in breach of term - damages = £9000.
- Court of Appeal dismiss the council's appeal
- They still used the words '**in good condition**'
- **What did Greenwich LBC do as a result?**

Unfair Contract Terms

OFT abolished 1/4/2014 replaced by Competition & Markets Authority (CMA)

Consumer Rights Act 2015 from 1/10/2015

- Replaces Unfair Contract Terms Act 1977 & Unfair Terms in Consumer Contracts Regulations 1994 & 1999
- Incorporates same principles but adds and extends to so-called '**grey list**'
- 'indicative and non-exhaustive list of terms' likely to be found to be unfair
- Includes **disproportionate cancellation charges** requiring consumer to pay for services which have not been supplied if consumer ends contract
- **Plain and intelligible language (transparent) and prominent**
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf
- CMA – consultation / undertakings from Aviva, Persimmon, Countryside, Taylor Wimpey re: doubling ground rents
- **When were tenancies / leases last reviewed to ensure they are fair?**

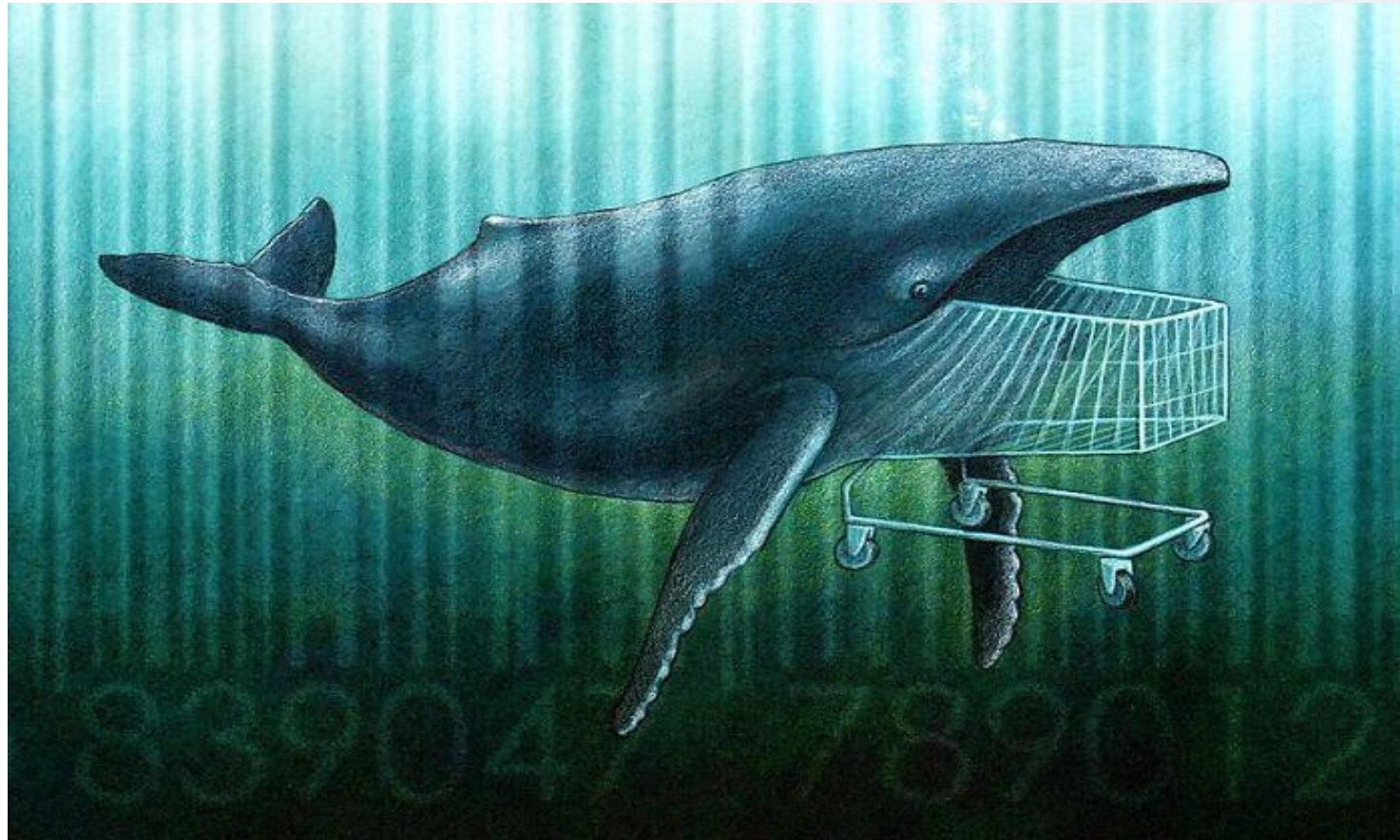
Repairs – who knows how to do it?



Repairs – tenants' responsibilities

- **'Use the premises in a tenant-like manner'** Warren-v-Keen 1954
- **'little jobs about the place a reasonable tenant would do'** – like what?
- Sweeping chimneys – Churchill-v-Nottingham CC 1999
- Tap washers – Islington LBC-v-Keane 2005
- Windows – Boswell-v-Crucible Steel Co of America 1925, Holiday Fellowship-v-Hereford 1959, Ball-v-Plummer 1879
- **Crime / incident numbers before repair – why? Burden of proof?**
- Plasterwork – Grand-v-Gill : Court of Appeal : 19 May 2011 – part of structure
- Bannisters – Hannon-v-Hillingdon Homes Ltd : High Court 2012 – part of structure, who removed them, 'constructive knowledge'

Capture all intelligence – analyse – decide



How is intelligence 'captured'?

- Are we proactive or reactive **or both?**
- How much do we know about our residents & **their homes?**
- **Data is gold – so is communication**
- People are people – **empathy & professionalism**
- They live in **homes not units**
- How many policies / procedures / processes are **'system' driven?**
- Can customers talk to **a real person if they choose?**
- What do we know about **'silent customers'?**

Notice requirement – our intelligence capture & record keeping is very poor!

- **How can residents notify promptly?**
- **Reasonable period** – emergencies / urgent / routine / planned
- Some landlords – emergencies / routine – binary & **over-simplistic!**
- **Capture all requests, record/log everything, anyone can request**
- Audit trail – ask all relevant questions

O'Brien-v-Robinson :1973 : House of Lords

- Work done to a ceiling several years before it collapsed
- No further complaint to the landlord before collapse, **no notice**
- Landlord held **not** to be liable for disrepair – could not have known

Sheldon-v-West Bromwich Corporation :1973 : Court of Appeal –

- Plumber employed inspected water tank, corroded not leaking
- It subsequently burst – landlord liable because plumber **should have reported corrosion** – put landlord under notice of need for repair.

Repairs by appointment



Access into peoples' homes

- **From start** – accompanied viewing, sign-up, reviews, audits, gas safety
- Is **provider / contractor** clear about **when access is agreed**?
- Is **occupier / key-holder** clear about **when access is agreed**?
- Do we all have **same** understanding / reminders / communications?
- **Who to believe** if operative claims no access or occupier claims never happened?
- What does **evidence** suggest?
- Do we have **gold** standard evidence capture system?
- Do we use **all resources & every visit** to confirm evidence?

Why is access refused?

- Inconvenient - for who?
- Attitude of landlord / contractor / operative?
- Previous experience or communication and/or works?
- Trust or lack of?
- Only certain people allowed in?
- No-one allowed in?
- Others (family / friends) refusing on behalf of tenant?
- Something to hide?
- Away temporarily or permanently?
- Who else might know why access cannot be obtained?

Access – escalator & enforcement

- Common law **right of access** for repair : Saner-v-Bilton 1878
- Give reasonable notice, exercised reasonably
- Periodic tenancies right to enter to prevent **significant risk of injury** : McAuley-v-Bristol : Court of Appeal : 1992
- **Statutory right to access : s.11(6) Landlord & Tenant Act 1985**
- In a lease in which the lessor's repairing covenant is implied there is also implied a covenant by the lessee that the lessor, or any person authorised by him in writing, may at **reasonable times of the day and on giving 24 hours' notice in writing to the occupier, enter the premises comprised in the lease for the purpose of viewing their condition and state of repair.**
- Implied for business efficacy
- Express in tenancy / lease / contract

Getting access if refused

- Use your **best negotiator**
- 3 strikes **escalator** in writing
- Breach of tenancy
- Mandatory injunction for specific performance – immediate if necessary + costs + penal notice
- And/or possession but takes time
- Environmental health warrant under Environmental Protection Act 1990

Emergency access by other professionals or housing

- S.115 Mental Health Act 1983 – approved mental health professional : if still refused
- **s.135 Mental Health Act 1983** magistrates for warrant
- **S.17 Police & Criminal Evidence Act 1984** – police power to enter and search premises **without a warrant** in order to arrest persons or to save life, limb or property
- In a housing **emergency** reserve the right in tenancy / lease
- **What is a housing emergency?**
- **Do you exercise this power & if so, when?**

Police access power under P.A.C.E.



Gaining access with warrant

- 18th century onwards public health & statutory nuisance
- s.79(1)(a) Environmental Protection Act 1990 **any premises in such a state as to be prejudicial to health or a nuisance**
- s.79(1)(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance
- s.79(1)(h) any other matter declared by any enactment to be a statutory nuisance
- Prejudicial to health = injurious or likely to cause injury to health

Gaining access with warrant ...(cont'd)

- It shall be the **duty** of every local authority...where a complaint of a statutory nuisance is made to it by any person living within its area, to take such steps as are reasonably practicable to investigate the complaint
- If environmental health are **satisfied** the nuisance is a statutory nuisance they **must** serve an **abatement notice** on the person by whose act, default or sufferance the nuisance arose in the first place
- Notice to comply (i.e. 14 days to arrange access)
- **Magistrates court warrant** under s.80 **to enter the premises if need be by force – paragraph 2(3) Schedule 3 EPA90**
- Warrant fee £22.00, injunction fee £332.00

Gaining access with a warrant

Part 1: "Premises"

Appendix 2.4

INFORMATION FOR WARRANT TO ENTER PREMISES
ENVIRONMENTAL PROTECTION ACT 1990: SECTION 81/SCHEDULE 3

The Information of *(name of EHO)* Environmental Health Officer of *(name)* District Council, who upon oath states that for the purposes of paragraph 2 of Schedule 3 to the Environmental Protection Act 1990 s/he has a right at any reasonable time to enter the premises known as *(address)*, in the borough of *(name)* in the occupation of *(name)*

And for the purpose of exercising that right, he applies for a Warrant to be issued for the reason that

On *(date)* a Notice pursuant to Schedule 3 of the Environmental Protection Act 1990 informing the said *(occupiers name)* of his/her intention to enter the premises on *(date)* was served but entry to those premises was not obtained.

And that there is reasonable ground for entry to the said premises for the purpose of the performance by the Council of their functions under Part III of the Environmental Protection Act 1990 and specifically *(eg to carry out works to abate a Statutory Nuisance)*

Wherefor the said *(name of EHO)*, applies for a Warrant authorising him/her to enter the premises pursuant to Schedule 3 of the Environmental Protection Act 1990.

Dated this _____ day of _____, 19 _____

63

Common Parts

- **No notice requirement – tenants do not have to report!**
- Always in landlord's possession – **duty of care – access not a problem**
- **Occupiers Liability Act 1957 – legally landlord occupies**
- BT-v-Sun Life Assurance : Court of Appeal : 1996 – no reasonable period to repair
- Liverpool CC-v-Irwin : House of Lords : 1977 – **reasonably safe & in reasonable condition**
- S.116 Housing Act 1988 – tenancies after 15/1/1989 landlord keep in repair the structure & exterior of any part of the building owned by him of which the particular dwelling comprises part
- Hence **new Fitness standard also covers common parts**
- **How to minimise risk of litigation for common parts defects?**

Fire Safety

- **Regulatory Reform (Fire Safety) Order 2005** into force October 2006 – did anyone notice?
- **‘Responsible person’** + those having control of building – landlords and agents must carry fire safety risk assessment
- Self-regulation – constant update, review and revision when refurbishment or regeneration
- Fire and Rescue statutory duty to ensure this happens.

Fire Safety ...(cont'd)

- Harrow Court, Stevenage 17 storey - 2 February 2005, 3 dead - wiring clasps melt
- Lakanal House, Southwark - 3 July 2009 - 6 dead - failure carry out assessments, faulty fire resistance, lack of compartmentation - HSE fine £570.000
- Shirley Towers, Southampton April 2010 - 2 dead fire-fighters - wiring clasps melt
- Changed building regulations BS7671 from July 2015
- Shepherd's Court, London - 19 August 2016 - faulty Whirlpool tumble drier, cladding contributory.

Shepherd's Court, London – 19 August 2016 – faulty Whirlpool tumble drier, cladding contributory



Grenfell Tower – 14/6/2017

"It is our conviction that a serious fire in a tower block... is the most likely reason that those who wield power at the KCTMO will be found out and brought to justice!" Ed Daffarn
November 2016



© Evening Standard / eyeVine

Grenfell Tower

- **Grenfell Tower** – 24 storey, completed 1974, 127 flats
- Refurbished 2016 – £9.7 million by Rydon
- 31 January 2018 – 210 page report by BRE Global for Met. Police
- ‘The original facade of Grenfell Tower, comprising exposed concrete and, given its age, likely timber or metal frame windows, would not have provided a medium for fire spread up the external surface’
- Poorly installed, insufficient fire barriers, gaps around window frames, plugged foam insulation, dry rise, not wet rise, space for a single fire engine, one narrow staircase, two lifts

Grenfell Tower Public Inquiry – Phase One

- 21/5/2018 – 12/12/2018 – **what happened on the night**
- Key expert and fire brigade – 140 engines/720 fire-fighters
- **No actual training** in high-rise fires (Babcock), computer simulation, no firebox with plan of size, number flats, hydrant, risers, lifts
- Stay put policy / compartmentation compromised
- Radio communications failed / insufficient breathing equipment
- Kim Cotton LFB 15 October 2019 'London fire brigade aren't the solution to this problem. **The solution is for buildings to be built, managed and inspected properly.**'
- Phase One Report October 2019
- <https://www.grenfelltowerinquiry.org.uk/phase-1-report>
- Recommendation for PEEPs (Personal Emergency Evacuation Plan) not accepted – 'practicality, proportionality and the safety case'.

Grenfell Tower Public Inquiry – Phase Two

- September 2020 – November 2022 (much delayed because of Covid)
- Council RBKC & managing agent RBKCTMO
- Rydon refurbish Grenfell Tower in 2016 – £9.7 million
- Studio E – architects
- Exova – fire safety consultant
- Carl Stokes – fire risk assessor for KCTMO
- Arconic PE cladding -ACM = aluminium sheets with a polyethylene core
- Celotex RS5000 insulation = combustible plastic ‘polyisocyanurate’
- Kingspan K15 insulation board = combustible plastic ‘phenolic foam’
- Harley Facades subcontractor installer
- Siderise supplier of ‘open state’ cavity barriers
- Aluglaze window panels supplied by Panel Systems
- British Board of Agreement (BBA) certifier of construction products
- Building Research Establishment (BRE) testing materials

Grenfell Tower Public Inquiry – Phase Two ...(cont'd)

- It became a huge '**I cannot recall / blame game**'
- Phase Two ended 10/11/2022 – final report – sometime in 2024 – late!
- <https://www.insidehousing.co.uk/news/news/lawyers-for-grenfell-community-set-out-rogues-gallery-of-organisations-most-accountable-for-fire-78971>
- Richard Millett KC counsel to inquiry
- '..each & every one of the risks which eventuated at Grenfell Tower on that night were **well known** by all who had any part to play. As a result, you will be able to conclude with confidence that each & every one of the deaths that occurred..**was avoidable**'
- Will Met. police / CPS go for **corporate manslaughter?** or **gross negligence manslaughter?** or **health & safety offences?**
- <https://www.northumbria.ac.uk/about-us/news-events/news/expert-comment-grenfell-tower/>

How many affected towers & who pays for remediation?

- Grenfell = independent expert advisory panel
- BS8414 – how ACM cladding systems behave in a fire
- ACM = aluminium sheets with a polyethylene core, which melts and burns at extreme temperatures.
- **"It's like cladding your home in solid petrol." Arnold Tarling**
- 1/10/2018 Gov. ban combustibles exterior **new high rise (18 metres)**
- **304 high-rise in England** same ACM cladding
- 17 October 2018 – £400 million for remediation in social housing
- 9 May 2019 – £200 million for remediation in private blocks
- 26 May 2020 £1 billion Building Safety Fund high rise non-ACM cladding
- Leasehold high rise blocks: who pays for fire safety work? House of Commons Library July 2021

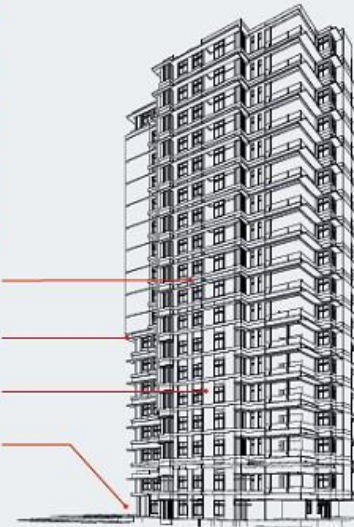
Who pays for remediation?

Indicative fire safety costs for a 23-storey residential tower

- Main contractor preliminaries and OHP £3.3m
- Decoration throughout £480,000
- Reinstall ceilings and light fittings £720,000
- Install new sprinkler system, including BWIC £960,000
- Remove ceilings to install new sprinkler system and isolation of services within £320,000
- Provide new Balconies £1.6m
- Install new lightweight cladding* £8.8m
- Remove existing cladding and balconies** £2m
- Provide access via mast climbers/climbing scaffold £1m

*average rate assumed - range £850 - £900/m² of façade area
**average rate assumed - range £150 - £200/m² of façade area

Total £19.2m



Works estimated to take

**15-18
months**

Notes:

- Excludes Professional, Legal and Statutory Fees
- Excludes costs of decanting and rehoming residents during the works
- All prices are subject to fluctuations due to changing market conditions
- All prices are likely to be subject to changes in the exchange rate
- Quantities are indicative and based on a typical building
- Assumes an "average" level of architecture, with a significant amount of repetition; no allowance for bespoke, purpose made items

Source: Gleeds

PropertyWeek.com

Remediation costs – who pays?

- <https://www.leaseholdknowledge.com/>
- BRE 'has a **financial interest** in permitting the use of combustible materials that it then tests'
- NHBC 'makes **money** by signing off combustible material'
- £80,000 bills for fire-watch at 57 flat Northpoint, Bromley
- £40,000 bills at Sesame Apartments, Battersea completed 2014

Leasehold Advisory Service (government funded)

- 'Modern leases will include an obligation on the freeholder to comply with statutory requirements, with a right to recover the cost of this from leaseholders'.
- 'Even if the lease does not contain a clause specifically allowing the freeholder to recover the cost of complying with [fire safety rules] the freeholder may be able to rely on other clauses in the lease, for example, a 'sweeping-up clause'.

Remediation costs – who pays?



Remediation costs – who pays?

First Port Property Services-v-Various Leaseholders Citiscape : 1st tier property tribunal : 9/3/2018

- 95 flats owned by Vincent Tchenguiz – company First Port
- Cost remediation £2.4 million
- Bill leaseholders service charge
- 1st tier property tribunal found against leaseholders
- “if the manager is obliged to do work...the tenants are obliged to contribute to the cost although they remain entitled to dispute the reasonableness of the cost”
- May have claims against:
 - Government (if building regulations not fit for purpose)
 - Cladding manufacturer (if warranties given)
 - Barratt Homes (builder if negligent in selection & installation)
 - L.B.Croydon (if errors in certification)
- Under pressure Barratt Homes agreed to fund all works!

Fire Safety Act 2021 – Royal Assent 29/4/2021

- Applies to **all multi-occupied residential buildings** where 2 or more sets of domestic premises
- Amends Fire Safety Order 2005 – requires all **responsible persons** to **assess, manage and reduce fire risks** posed by structure, external walls (including cladding, balconies & windows) & any of common parts & entrance doors to individual flats
- S.1 & 3 Fire Safety Act into force **12 May 2022**
- From 23/1/2023 for **multi-occupied buildings over 11 metres** responsible person must
- Carry out quarterly checks of all fire doors in communal areas
- Carry out annual checks on all flat entrance doors
- Provide information to residents about the importance of fire doors
- Responsible Person should check for & identify any obvious issues with fire doors, such as broken closers

Building Safety Act 2022 – Royal Assent 28/4/2022

- **5 July 2021 Building Safety Bill** – between Commons & Lords – ‘changed beyond all recognition’
- **Building Safety Act 2022 – 262 pages**
- 1st regs. Oct.2022 – April 2023 / 2nd regs. April 2023 – Oct. 2023
- **New Building Safety Regulator (HSE)** – building regs / competencies
- **Stricter** regulatory regime higher risk buildings (**over 18 metres**) – incl. hospitals & care homes but **not** hotels / prisons / military
- Duty-holders / designers / contractors
- **Gateways** for each stage of planning / construction / handover
- **Accountable person** responsible for safety in high rise
- **Resident Engagement Strategy (s.91-94)**

Building Safety Act 2022 – Royal Assent 28/4/2022 ...(cont'd)

- **S.123 remediation orders (RO) – Batish & others-v-Inspired Sutton Ltd.**
1st tier property tribunal :13/1/2023 – remove defective cladding – £192,000, could not charge leaseholders
- **Waite & others-v-Kedai Ltd** 1st tier property tribunal 9/8/2023 – extensive detailed RO, to be paid for by Kedai Ltd.
- S.124 remediation contribution order (RCO) – **Triathlon Homes LLP-v-SVDP, Get Living & EVML.** 1st tier property tribunal : 19/1/2024 former athlete village from 2012 Olympics, 2818 homes, claim £18 million, (total cost £24.5 million, forecast & already incurred, can include cost works before BSA, 'just & equitable test'. Triathlon won.
- **Cannot charge leaseholders** for cladding removal **over 11 metres**
- Cannot charge leaseholders for any remediation work if worth less than £175,000 outside London, £325,000 inside London
- Residents must – co-operate with Accountable Person / grant access

Building Safety Act 2022 – Royal Assent 28/4/2022 ...(cont'd)

- **Qualifying** lease – single dwelling within a building of above 11 metres
- Granted before **qualifying** date – 14/2/2022 – dwelling was only or main home,
- Did not own **more than 3 dwellings** in the United Kingdom in total
- Protections apply to the property based on its status on 14 February 2022 are **automatically transferred** to future buyers of the lease
- Retrospective amendment to BSA 2022 protections for leaseholders continue where leases extended / varied / replaced by a new lease
- Into effect on 26 December, 2 months after Royal Assent of the Levelling Up and Regeneration Act 2023
- S.243 of the [Levelling Up and Regeneration Act 2023](#).

Building Safety Act 2022 – Royal Assent 28/4/2022 ...(cont'd)

- **S.135** add 2A Defective Premises Act 1972 works before **22/6/2022** **extends** limitation from **6 to 15 years**
- **Works after 22/6/2022** s.1 Defective Premises Act 1972 extends limitation retrospectively **30 years**
- Developer levy for contribution to remediation
- New Homes Ombudsman
- **Remove 'democratic filter' for Housing ombudsman**
- New regulator for construction products
- Amendments to Fire Safety Order 2005 – Responsible Person & competence.

Responsible Actors Scheme

- ss.126-129 of Building Safety Act 2022 + Regulations - into force on 4 July 2023

Aims of the Scheme

- Requires any member of the Scheme must:
- ID residential buildings over 11 metres in height, developed / refurbished over 30 years ending 4 April 2022 known to have life-critical fire safety defects
- Remediate and/or mitigate, or pay for the remediation/mitigation of, life-critical fire safety defects in those buildings; and
- Reimburse government schemes for taxpayer-funded work to remediate and/or mitigate defects in those buildings
- Principal business (more than 50%) residential property development
- Has developed / refurbished (excluding work done solely as a contractor) two or more buildings eligible for a relevant government cladding remediation scheme
- They voluntarily choose to join the Scheme.
- Average annual operating profit in the financial years ending in 2017, 2018, and 2019 was £10 million or higher

Who pays for remediation? ...(cont'd)

Corporation of London-v-Various Leaseholders of Great Arthur House : Court of Appeal : 25 March 2021

- Grade 2 listed building, 120 flats on Golden Lane Estate built 1957
- Dispute about costs of **£8 million to re-clad tower block** & potential service charge **£72,000** each lease granted under RtB
- Words in covenant to pay a service charge in respect of '**repairs...not amounting to the making good of structural defects**'
- Therefore excluded charges to structure & exterior which made good a structural defect & remediation that had occurred over time since defect existed
- Corporation lost at first tier, Upper tier & Court of Appeal
- Supreme Court leave to appeal refused 15 August 2022

Corporation of London-v-Various Leaseholders of Great Arthur House : Court of Appeal : 25 March 2021



Who pays for remediation?

Martlet Homes Ltd.(Hyde Group)-v-Mulalley & Co : Court of Appeal : 24 January 2022

- Martlet discovered '**major fire safety defects**' on its towers in Gosport following the Grenfell Tower fire in June 2017
- **£10.8m** claim against design & build contractors Mulalley & Co, alleging inadequate design & workmanship - installation of an external wall product system, included expanded polystyrene (EPS) insulation
- Mulalley defence – certificate demonstrated that system complied with building regulations **at time of contract** + cause of loss was EPS insulation, prohibited in 2017 but **not at the time of the contract**
- Hence owner of high-rise fitted with combustible cladding can amend its claim outside the limitation period
- 'It would be invidious if a defendant, having deliberately put in issue the compliance of the building design with the regulations in force at the time of construction, could escape the consequences of an adverse finding on that issue by using limitation as a shield against a claim relying upon the non-compliance.'

Martlet Homes Ltd.(Hyde Group)-v-Mulalley & Co : Court of Appeal : 24 January 2022



Who pays for remediation?

**Willmott Dixon-v-Prater, Lindner, Sheppard Robson, Aecom, AIS
Chartered Surveyors**

Technology & Construction Court : 7 February 2023

- Willmott Dixon (**WD**) **settled** with Tesco for remedial works **£46.67 million**
- Original external wall system (EWS) of 17 storey building completed 2014 did **not comply** with Building Regulations
- Kingspan K15 insulation behind cladding combustible + Wallplank rainscreen not adequately fire rated
- No cavity barriers around doors, windows, other openings & at junction with roof
- Multiple other failures by all above
- WD now suing design & build façade specialist Prater & parent Lindner + architects Sheppard Robson + fire consultants Aecom + approved inspector AIS Chartered Surveyors

Willmott Dixon-v-Prater, Lindner, Sheppard Robson, Aecom, AIS Chartered Surveyors : Technology & Construction Court : 7 February 2023



Samuel Garside House – 9 June 2019

- Timber balconies / wooden cladding – 20 flats destroyed
- Complex ownership Southern Housing + private leaseholders
- Less than 18 metres, sprinklers & alarms didn't work, fire doors ineffective
- https://www.lbbd.gov.uk/sites/default/files/attachments/Samuel%20Garside%20House%20Review_Dec%202020.pdf



Beechmere complex – 9 August 2019

- Your Housing – 132 home retirement complex
- Opened 2009 – PFI Cheshire County Council, developer Advantage Your Housing, MJ Gleeson and Nationwide
- 1,700 cubic metres timber frame – lauded building as having the largest timber content of any on-site project in Europe
- Arnold Tarling '**The timber frame** is the big problem. When fire gets into the cavities there is not much you can do. You see it time and again with timber frames where the building is completely lost.'
- Architect Sam Webb 'What happens in a timber frame building, if you **haven't got sprinklers**, is that you get flashover very quickly.'
- Flashover is point at which all combustible materials in a room reach a temperature that causes them to spontaneously ignite
- **3/7/2023 Cheshire Fire & Rescue to prosecute for breach Fire Safety Order 2005**
- Failure to make a suitable risk assessment / to take measures to prevent the spread of fire & to ensure escape routes were protected & people were able to evacuate as quickly & safely as possible, to maintain facilities for firefighters, such as inadequate protection of dry riser shafts & to co-operate and co-ordinate with "other responsible persons"
- **First hearing April 2024, if progresses to 10 week trial 5/5/2025**

Beechmere complex – 9 August 2019 ...(cont'd)



Richmond House, Worcester Park – 9 September 2019

- Built by Berkeley Homes
- Owned by MTVH – shared owners 23 flats, less than 18 metres
- Timber framed but concrete aggregate cladding – burnt out in 20 minutes
- https://www.bindmans.com/uploads/files/documents/Richmond_House_Probyn_Miers_report.pdf
- **Arnold Tarling** found a '**large gap between the fire stopping** and the cladding' which would act as a chimney through which a fire will spread [...] what we have here is a form of fire stopping which just won't do its job'.
- **Greig Adams** said the breaches had 'consequences, including a considerable increased risk to life in the event of a fire. The provision of effective fire barriers is a **mandatory requirement, not an element that can be shoddily thrown together or to cut corners on**'.

Richmond House, Worcester Park – 9 September 2019 ...(cont'd)



Gas Safety Installation & Use Regulations 1998

- Gas Safety Installation & Use Regulations 1998
- Gas Safe registered <http://www.gassaferegister.co.uk/>
- Each appliance, piping & flue - at least every 12 months
- 'Gas safety record' retained & copy to tenant within 28 days
- Landlord must take 'reasonable steps' - **No forced entry!**
- If fail NSP, mandatory injunction, EPA1990 statutory nuisance
- HSE prosecution if fail
- HSE-v-North British HA 1997
- HSE-v-Severn Vale HA 2009
- HSE-v-L.B.Hammersmith & Fulham 11/7/12

s.11 Landlord & Tenant Act 1985

'The landlord shall keep in repair the structure and exterior of the premises (including drains, gutters and external pipes)'

- roof
- outside walls, doors, window sills, window catches, sash cords & window frames including external painting and decoration
- internal walls, floors, ceilings, doors/frames/hinges & skirting boards
- chimneys, chimney stacks & flues
- pathways, steps & other means of access
- plasterwork
- integral garages & stores
- boundary walls & fences.

s.11 Landlord & Tenant Act 1985 ...(cont'd)

'The landlord shall also keep in repair & working order any installations provided for space heating, water heating and sanitation & for the supply of water, gas, electricity including

- basins, sinks, baths, toilets, flushing systems, waste pipes,
- electric wiring (incl. sockets & switches), gas, water pipes,
- water heaters, fireplaces, fitted fires, central heating.'
- **Right of access** s.11(6) Landlord & Tenant Act 1985
- **Standard of repair** s.11(3) Landlord & Tenant Act 1985
- **Age, character, life & locality**
- 'having regard to the age, character and locality of the house, would make it reasonably fit for the occupation of a reasonably minded tenant of the **class who would be likely to take it.**' – [Proudfoot v. Hart](#) (1890) 25 QBD 42,55

s.4 Defective Premises Act 1972

Statutory Duty of care

- "Where premises are let under a tenancy which puts on the landlord an obligation to the tenant for the **maintenance or repair** of the premises...owes to **all persons** who might reasonably be expected to be affected by defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a **relevant defect**."
- "duty is owed if the landlord **knows** (whether as the result of being notified by the tenant or otherwise) or if he **ought** in all the circumstances to have known of the relevant defect."

Defective Premises Act 1972

- **Landlord reserves right of entry, landlord's responsibility**
- Clarke-v-Taff Ely BC : Court of Appeal : 1984 – visitor injured, council should have known houses type & age susceptible to dampness & rotting floorboards
- Boldack (Minor)-v-East Lindsey DC : Court of Appeal : 1998 – child injured when pulled paving stone onto self in back garden
- Morley-v-Knowsley BC : Court of Appeal : 5/2/1998 – void inspection not picked up broken leading edge on stairs
- Alker-v-Collingwood HA : Court of Appeal : 7/2/2007 – no disrepair
- Paula Pritchard-v-Caerphilly CBC (2013) CC – handrail failed but no obvious disrepair = latent defect
- Rogerson-v-Bolsover District Council (2019) : Court of Appeal – tenant injured when fell through inspection cap – pressure test would have revealed but no general duty to inspect?
- s.1 includes works & improvements

Repair or make safe?

Lafferty-v-Newark & Sherwood DC

High Court : 19 February 2016

- Lafferty injured when she fell into a hole that had opened up in her garden – cause = fractured underground pipe
- **‘relevant defect’** DPA1972 & within landlord’s repairing obligations
- But no way to indicate potential problem, no inspection would have identified
- High court dismissed appeal
- DPA1972 ‘ought in all the circumstances to have known of the relevant defect’

Condensation & Human Rights Act

Lee-v-Leeds CC and Ratcliffe-v-Sandwell MBC : Court of Appeal : 29/1/2002

- Council houses affected by **condensation, dampness & mould growth**
- They lost at the County Court as the dampness was neither caused by damage to the structure of their homes, nor had it been as a result of disrepair
- The Court of Appeal dismissed their appeals
- s.11 Landlord & Tenant Act 1985 + s.4 Defective Premises Act 1972 as stretching to breach of Article 3 Human Rights Act 1998 nor that damages be paid for an alleged breach of duty
- The Court of Appeal held that **Quick-v-Taff Ely BC 1986** Court of Appeal was still the **correct law**
- **See also Dover DC-v-Farrar 1982 Court of Appeal**
- **GLC-v-Tower Hamlets LBC 1984 Court of Appeal**
- Both cases involving statutory nuisance – ‘who was responsible’ landlord held not to be responsible if the real reason for statutory nuisance is tenant’s own conduct i.e. failure to use heating system supplied or behave reasonably.

Poorly fitted fire door in museum



Repair or improvement or..?

Network Homes Ltd v Harlow High Court : 16 November 2018

- Injunctive access required to fit **new fire door** in sheltered
- **Did tenancy agreement allow landlord to compel access?**
- Tenancy very poorly drafted and criticised
- County Court (HHJ Luba) held **new door = improvement** and could not insist on access, injunction denied
- High Court allowed appeal read clause 3.19
- "...reasonable access to the Property to inspect or carry out essential maintenance, inspection and repair to the Property or to the building or estate in which the Property is situated. This includes treatment programs for pest eradication, **improvement work** and access to repossess your home if it is to be redeveloped or disposed of."

Repair or improvement?

- Depend on the facts & circumstances of each case
- Nature & age of the property
- It's condition when let
- Express terms of the tenancy
- Most effective way of remedying the defect.

Repair or improvement? ...(cont'd)

McDougall-v-Easington DC : 1989 :

Court of Appeal

1. Whether the alterations are to the whole or only part of the structure?
2. Whether effect of the alterations is to change the building so much it would change the character of the premises from that when let.
3. Cost of the works relative to its previous value, the effect of the works on the value & the life-span of the building.

Making good / redecorating

- Landlords must make good or redecorate on completion of repair works
- **Bradley-v-Chorley BC : 1985 Court of Appeal**
- **McGreal-v-Wake : 1984 : Court of Appeal**
- **Vukleic-v-Hammersmith & Fulham LBC. CC** Legal Action November 2003
- But not necessarily after works of improvement
- **McDougall-v-Easington DC : 1989 : Court of Appeal.**

Right to Repair

- **Urgent types of minor repair effecting health, safety or crime prevention**
- Prescribed defects
- Less than £250.00
- Prescriptive for councils, less so housing associations
- Compensation £10.00 + £2.00 per day!

Right to Repair ...(cont'd)

Defect	Prescribed period in days
Total loss of electric power	1
Partial loss of electric power	3
Unsafe power / socket / fitting	1
Total loss of water supply	1
Partial loss of water supply	3
Total / partial loss of gas supply	1
Blocked flue to open fire / boiler	1
Total / partial loss of space / water heating 31/10 – 1/5	1
Total / partial loss of space / water heating 30/4 – 1/11	3
Blocked / leaking foul drains / stacks / toilets	1

Right to Repair ...(cont'd)

Defect	Prescribed period in days
Leaks / flooding water / heating pipes / tanks / cisterns	1
Toilet not flushing	1
Blocked sink / bathroom basin	3
Taps cannot be turned	7
Insecure external window / door / lock	1
Loose or detached banister / handrail	3
Rotten timber flooring / stair treads	3
Door entry-phone not working	7
Mechanical extractor fan kitchen / bathroom not working	7

Improvements

- Tenancy / lease / contract
- Landlord or tenant **probably need consent**
- 'will not be unreasonably withheld'
- Depends on what is proposed
- May need planning permission?
- May need building control over-sight?
- Who will pay for improvements?
- Who will pay if they need repairing?

Right to Improve

- Secure tenants = **right** to make improvements **with landlord's consent**
- Secure tenants claim compensation for some improvements when end tenancy
- Minimum compensation - £50.00, maximum - £3000.00
- No compensation if Right to Buy or being required to give up the tenancy by a Court order, or the sole tenancy is converted into a joint (or vice versa)

Compensation for Improvements

- Claims - no sooner than 28 days before end tenancy - no later than 14 days after
- The formula for calculating compensation is:

$$\frac{C \times 1 - (Y)}{(N)}$$

- Where C = cost of improvement (excluding grant)
- Where N = notional life of improvement (see table below)
- Where Y = number of years ago improvement was completed

Right to Improve ...(cont'd)

Qualifying improvement	Notional life in years
Bath or shower	12
Wash hand-basin	12
Toilet	12
Kitchen sink	10
Storage cupboards in bathroom or kitchen	10
Work surfaces for food preparation	10
Space or water heating	12
Thermostatic radiator valves	7

Right to Improve ...(cont'd)

Qualifying improvement	Notional life in years
Installation pipes, water tank or cylinder	10
Loft installation	20
Cavity wall insulation	20
Draught proofing external doors or windows	8
Double glazing or external window replacement of secondary	20
Rewiring or provision power, lighting or other electrical	15
Improved security (excluding burglar alarms)	10

Negligence

- Negligent act or omission
- Duty to mitigate loss
- Donoghue-v-Stevenson : House of Lords : 1932 – who is my neighbour in a liability sense
- Adams-v-Rhymney Valley DC : Court of Appeal : 2000 – whose duty of care
- Miller-v-Reading BC : High Court : 2000 personal injury damages £1.3 million.

Set-off and counter-claim

- What is rent for? Same contract
- Not wise to withhold rent or encourage others (rent strike)
- But common threat if repairs not done
- Dangerous strategy – doesn't always work
- Mandatory grounds for possession!
- Lee Parker-v-Izzett 1971 – inform landlord, give reasonable period, inform landlord do works self / get 3 quotes, send to landlord, instruct cheapest, invoice landlord or pay self
- Argue off-set

Damages for disrepair

Brent LBC-v-Carmel : 1996 : Court of Appeal

- Brent - possession & judgement for arrears of £13,000+
- Carmel counter-claimed for disrepair & set-off
- At trial Brent abandoned its possession claim & £3858 for the rent claim (for heating it had never provided)
- Judge found Carmel first complained in 1981 - damages for discomfort & inconvenience at £1000 per year 1981-86, £1500 per year 1987-93 (total £14,000)
- Damages for diminution of value at 30% for 1986/7 & 50% from 1988-93 & special damages £19,320 + interest at 13.5% from 1986 to trial
- After setting off & extinguishing the residual rent claim, tenant was awarded **£50,004**
- Court of Appeal upheld the award!

What causes disrepair claims?

Poor Communication

- Between landlords & tenants
- Poor record keeping?
- What information?
- What expectations?
- Why failed appointments?
- Vague instructions / advice?
- Lack of audit trail?

What causes disrepair claims? ...(cont'd)

Poor Co-ordination

- Between landlords & managing / letting agents
- Who is responsible for what?
- Boundary management?
- Why keep tenant waiting?
- How much sub-contracting?

What causes disrepair claims? ...(cont'd)

Poor Co-ordination

- Between technical & management
- Internal departmental/sectional silos?
- Void management – who is responsible?
- Who signs off voids?
- Letting standard?
- Pressure to fill the void?

Referring claims to insurers

- Who are your insurers?
- What is excess?
- What is excluded in T&C?
- Why wait for insurers assessment?
- Who is legally responsible?
- Liability under terms of insurance not necessarily same as liability in law!
- Maybe pay compensation and then claim back from insurance?
- Not everyone is insured?

Critical events

- In-house or out-sourced?
- Central multi-skilled or local specialist?
- What feedback expected?
- What performance indicators?
- Who monitors?
- Who analyses feedback?
- Post-inspection?

Stopping it going critical / legal

- When is critical juncture?
- What intervention would stop this?
- Role for surveyors – history & audit
- Can relationship be salvaged?
- What's wrong with saying 'sorry'?
- Offers to settle without admitting liability
- Part 36 offers – to solicitors
- Limitation 6 years from when landlord knew

Pre-Action Protocol for Housing Conditions Claims (England)

- December 2003 / revised 2015 / revised again February 2020 to take into account new fitness standard
- Applies therefore to civil actions for disrepair / fitness / defective premises / negligence / damages
- Not apply to environmental health / counter claims or set-offs
- Landlord **must be aware of the disrepair – notice**
- Sets out specific procedures & timetables – templates

Pre-Action Protocol for Housing Conditions Claims (England) ...(cont'd)

Consider other options

- Mediation - negotiation & settlement ADR
- Internal complaints
- Right to repair scheme
- Ombudsman
- Environmental health
- **Atkins-v-Bristol CC** : County Court : 20/2/2019 : council refused disclosure successfully argued PAP refers to above in **Paragraph 4 & should be tried before issuing claim Paragraph 5 (ENL / LOC)**
- **Churchill-v-Merthyr Tydfil BC** : Japanese Knotweed case but whether a claimant who unreasonably refuses to engage in ADR is in breach of the requirements of the PAP can be precluded from bringing or advancing a claim in court – **Court of Appeal : 8/11/2023**

Pre-Action Protocol – start point

Early notification letter

- Basic info including access
- Details of defects
- Proposed expert & instructions
- Full disclosure

Letter of claim

- Above + history, attempts to resolve
- Effect on tenant + personal injury
- Special damages
- Limitation – 3-6 years.

Pre-Action Protocol – response

- Landlord respond within **20 working days**
- **Full disclosure** – all relevant records
- Response to proposed expert & instruction
- If **not** agree then **joint inspection**
- Another 20 working days for expert report
- Admit liability **some or all**
- **Lack notice or access**
- Schedule of works
- **Offer** of compensation and/or costs
- **Fail to respond = breach of protocol**

Pre-Action Protocol – Experts

- **Not always necessary**
- Other evidence if claim only damages
- Expert to look for disrepair landlord **should have known**
- Single joint expert – joint or separate instructions
- Historical mistrust of other sides' expert

Pre-Action Protocol – Experts

- **Inspection within 20 working days**
- Schedule of works list defects
- **Timetable**
- Areas of **disagreement**
- Agreed schedule within 10 working days
- Urgent cases – **significant** risk to health & safety
- Interim injunction

Pre-Action Protocol – Experts ...(cont'd)

- Reasonable access & notice
- Costs agreed at outset
- Charges / fees / time
- Relevant expenses
- Attendance at court
- Time for report delivery & payment
- How fees paid
- Extra questions

Funding disrepair cases

- **Conditional Fee Agreements** – CFAs ‘no-win, no-fee’
- History and drivers
- Success fees from damages or recoverability?
- **CMCs – Claims management companies**
- After the event insurance – AVE
- Legal Aid, Sentencing & Punishment of Offenders Act 2012
- Disrepair **out-of-scope** unless ‘serious risk to the health or safety’
- Only for order to do works (injunction) not damages
- Which ‘track’ case allocated to ?
- Small claims repairs less than £1000 (but no costs!)
- Personal injury less than £10,000.

Expert reports

- "...where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence." Civil Evidence Act 1972 s.3(1)
- Includes instructions, independent & **duty to court**
- Where do they come from?
- Structural surveyors?
- Environmental health?
- GPs?
- Qualifications?
- Analyse the reports – 21st century, exaggerated, remedy defect?

Homes (Fitness for Human Habitation) Act 2018 & Housing Disrepair

Richard Paris – 2024