

Workshop 1B

Homes (Fitness for Human Habitation) Act 2018

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Room: York



**NHMF
Maintenance
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Intro

- Riverside was founded in 1928
- We manage and own 62,323 properties across 170+ local authorities
- We provide a vast range of services across all tenure types
- Like most RPs, we have faced challenges in relation to budget restrictions, exacerbated by an ageing stock profile in some regions
- It's fair to say that internally, we have been on a journey of discovery and understanding

Current Climate

- Riverside has managed circa 800 disrepair claims over the past three years
- Across such a vast geographical disbursement and stock count, this might not sound like a major issue
- However, around 90% of claims received have come within Liverpool City Region, equating to a claim occurring in almost 5% of our general needs stock within the region
- We currently have 239 live cases across the Group with an projected financial risk of £2.7m

Current Climate

- Over the past three years we have incurred costs in excess of £7m
- This can be roughly attributed across the following splits:-
 - Compensation 15%
 - Works 20%
 - Our legal costs 25%
 - Claimants legal costs 40%
- Riverside incur costs of around £350,000 PA via the development of an in house disrepair team

Current Climate

- Trend analysis of the received claims shows a pattern not dissimilar across the sector

| Repair Type | Percentage of Claims |
|-----------------------------|----------------------|
| Damp/Mould/ Condensation | 77.10% |
| Roofing | 7.37% |
| Leak | 5.53% |
| Windows | 3.22% |
| Structural | 2.30% |

- Frustratingly, 26% of our claims are reporting roofing issues, where damp was the primary cause of the claim.

External Forces

- Aggressive door knocking campaign by claims management farms
- Social media / web based marketing
- Lack of regulation in relation to 'legal' practices
- Financial hardship of customers – arrears and counterclaims

Homes (Fitness for Human Habitation) Act 2018

- Why?
- What type of tenancies does it apply to?
- What does the Act do?
- Exemptions
- Battlegrounds
- Practical considerations

Why?



Rogue landlords

Grenfell Disaster



What type of tenancies does it apply to and when?

Dwellings let wholly or mainly for human habitation on:

- Tenancies with a term of less than 7 years granted on or after 20 March 2019;
- Tenancies renewed for a fixed term on or after 20 March 2019; and
- All periodic tenancies from 20 March 2020.

What does the Act do?

- Government's published position: *Designed to ensure that all rented accommodation is fit for human habitation and to strengthen tenants' means of redress against the minority of landlords who do not fulfil their legal obligations to keep their properties safe.*
- Amends the Landlord and Tenant Act 1985 (LTA 1985) by inserting into Section 9A an implied covenant that the dwelling:
 - Is fit for human habitation at the commencement of tenancy; and
 - Will remain fit for human habitation for the duration of the tenancy.
- Where the dwelling forms part of a building, the implied covenant will also apply to common parts over which the landlord has an interest or estate (S. 9A(6)).

What does “fit for human habitation” mean?

- No definition. In determining whether a house is unfit for human habitation, regard shall be had to its condition in respect of the following matters (S.10 LTA 1985):

| Repair | Stability |
|--|------------------------------------|
| Freedom from damp | Internal arrangement |
| Natural lighting | Ventilation |
| Water supply | Drainage and sanitary conveniences |
| Facilities for preparation and cooking of food and for the disposal of water | Any prescribed hazard |

- The house shall be regarded as unfit for human habitation if, and only if, it is so far defective in one or more of those matters that **it is not reasonably suitable for occupation in that condition.**

Housing Health & Safety Rating System (“HHSRS”) Hazards

| | | |
|--|---|--|
| Damp & mould growth | Excess cold | Excess heat |
| Asbestos and Manufactured Mineral Fibres | Biocides | Carbon Monoxide and fuel combustion products |
| Lead | Radiation | Uncombusted fuel gas |
| Volatile organic compounds | Crowding and space | Entry by intruders |
| Lighting | Noise | Domestic hygiene, pests and refuse |
| Food safety | Personal hygiene, sanitation and drainage | Water supply |
| Falls associated with baths | Falls on level surfaces | Falls associated with stairs and steps |
| Falls between levels | Electrical hazards | Fire |
| Flames, hot surfaces and materials | Collision and entrapment | Explosions |
| Ergonomics | Structural collapse and falling elements | |

Exemptions

A landlord will not be liable where:

- The defect is caused by the tenant.
- The defect is caused by fire, storm, flood or other inevitable accidents.
- The landlord can't get necessary consents or planning permission.
- The tenant is not an individual.

Battlegrounds!



Condensation

- Damp AND mould growth - now actionable
- Get to the root of the cause. Diagnosis is crucial.
- If it is caused by tenant lifestyle it will not be actionable (in same way as S.11).
- Condensation caused by a structural defect will be landlord's responsibility.
- Inherent design defect?
- Consider expert evidence.

Access

- There is an implied covenant that the tenant will allow access to the dwelling to the landlord or any person authorised in writing by the landlord, to inspect its condition and state of repair (S.9A(7)):
 - At reasonable times of the day only; and
 - Subject to at least 24 hours' notice in writing being given to the occupier of the dwelling (S.9A(8)).
- This mirrors the existing implied covenant in S.11(6) LTA 1985.
- Right of access to undertake works?
 - Assured tenancies: S.16 Housing Act 1988
 - Secure tenancies: No statutory right but rely on contractual or common law rights
- Enforce right of access through injunction proceedings

Remedies

- Remedies for tenants include:
 - (1) An order by the court requiring the landlord to take action to reduce or remove the hazard (specific performance); and / or
 - (2) A claim for damages.
- Landlords also need to be aware of:
 - (1) Local Authority enforcement powers.
 - (2) Complaints to the Housing Ombudsman and / or Regulator.
 - (3) Adverse publicity.

Practical considerations (1)

- The pre-action protocol for disrepair claims has been amended to include HFFHH claims.
- The notice requirements will most likely be the same as with disrepair claims, i.e. common law position.
- Expert evidence won't be essential but may assist.
- Legal aid will be available on same basis as S.11 claims – i.e. where issues causing a serious risk to health and / or safety of occupiers.
- Damages likely to be assessed in similar way to S.11 claims.
- Allocation rules (and therefore cost consequences) the same as for S.11 claims.
- You can't contract out.

Practical considerations (2)

- Decoration – obligation to make good
- Know your stock – assess weaknesses / risk areas
- Review voids processes – increasingly important
- Management of communal areas
- Review budgets – more claims? More compensation? More costs?
- Post inspections – increasingly important
- Ensure experts are suitably qualified (update instruction letters)
- No defence for inherent design defects?

Practical considerations (3)

- High threshold? - Put tenant to proof on unsuitability for occupation
 - When did the tenant first report the issues?
 - How often have the reports been made?
 - Has the tenant presented as homeless to the LA?
 - Medical records
- Review decant policies / decant agreements – are they fit for purpose?
- Don't underestimate the importance of record keeping

Mitigation - Claims

- Growth of an in house, specialist surveying team
- Internal communication and 'soft' education
- Prompt resolution of live claims
- Bolstered in house legal team to work alongside external partners
- Ventilation budget to be assigned to function for first time
- Created an environment where constructive challenge is welcomed

Mitigation - Strategic

- Trend analysis
- Predictive modelling around properties at risk of damp, mould & condensation
- Review of void and day to day repairs offer
- Connected homes project underway
- Mutual referral system set up with Housing and Income Maximisation teams
- Formation of best practice Group with RPs covering in excess of 250,000 properties

Q&A

Thank you.

See you at the
next conference!