

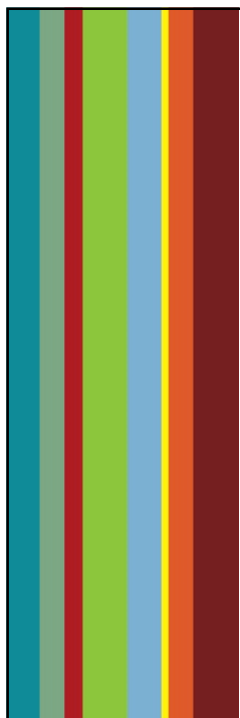


Anthony Collins
solicitors

Fire Safety and Legal Obligations
for Landlords

National Housing Maintenance Forum

Andrew Lancaster
10 November 2017



What are the issues you are facing
post Grenfell?

The Current Legal Framework – An Overview

Fire Safety...

- The Regulatory Reform (Fire Safety) Order 2005
 - The FSO only applies to the communal areas of residential properties and plant rooms
 - Duties are imposed on freeholders, landlords, managing agents and contractors who maintain fire safety measures (the 'responsible person')



FSO in overview

General Fire Precaution

Responsible person must take precautions as may reasonably be required in the circumstances to ensure that the premises are safe.

Risk Assessments

- Must be suitable and sufficient (consider the size of the building)
- May need an external consultant if the building is complex
- Keep it up to date particularly if there is a change in circumstance e.g. there is a fire or "near miss"

Documentation

Record prescribed information:

- Significant findings
- Precautions to be put into place
- Any groups of persons especially at risk

Record fire safety arrangements needed e.g. policies and procedures

You may need to present these documents to an enforcing authority

FSO in overview

Fire Safety Arrangements

- Cover effective planning, organisation, control, monitoring and review
- Be appropriate to the size of the undertaking and the nature of its activities
- Emergency routes and exits must be kept clear and signs/emergency lighting provided
- Appropriate evacuation procedures

Competent Persons

Help discharge:

- Implementing measures for fire-fighting
- Evacuation procedures
- Undertaking the preventive and protective measures

Consider:

- Does the person have enough knowledge
- Are there enough competent persons

Fire Fighting and Fire Detection

Responsible person must:

- Ensure there is equipment for fire-fighting/detection
- Take measures for fire-fighting/nominate a competent person to do so
- Arrange any necessary contacts with external emergency services

There is a separate duty to safeguard the safety of fire-fighters.

FSO in overview

Co-operation

If there is more than one responsible person they must:

- Co-ordinate the measures each is taking to comply with the requirements
- Inform each other if significant risks arise

Information and Training

These mainly relate to employees

Potential liability...

■ FSO

- Enforcement powers by the relevant fire authority.
- Failure to comply can result in a fine and may result in imprisonment if proceedings are brought in the Crown Court.
- A recent example:
 - Lakanal House – Southwark Council paid £270,000 in fines and £300,000 in costs after pleading guilty to 4 offences under the Regulations
- Civil liability can also be considered if there is a breach of statutory duty



Fitness for habitation – Housing Act 2004

Duty on local housing authorities to keep housing in their area under review

Housing Health and Safety Rating System replaced “fitness for habitation” tests in 2004

Test now based on “hazards”

Hazards fall into 2 categories:

- Category 1 – has serious or immediate risk to a person’s health and safety
- Category 2 – is less serious or urgent

“Hazard”

“any risk of harm to the health or safety of occupier arising from a deficiency in the dwelling or building or land in its vicinity”

Housing Act 2004 - hazards



Local Housing Authorities (Council) **must** inspect if they become aware of a hazard.

Assessment is to identify hazards (including the risk of fire) in **each individual flat/dwelling**

Council can take enforcement action or emergency remedial action.

Duty to consult fire authority

Building Regulations 2010 regulate fire safety for building work – see Part B

Ensure Satisfactory provision of means of giving an alarm of fire and a satisfactory means of escape

Ensure fire spread over the internal linings of buildings is inhibited

Ensure the stability of buildings in the event of a fire; that there is a sufficient degree of fire separation within buildings; automatic fire suppression; inhibit the unseen spread of fire

Ensure external walls and roofs have adequate resistance to the spread of fire over the external envelope, and that spread from one building to another is restricted

Ensure access for fire appliances and the provision of facilities in building to assist firefighters in the saving of life of people in and around buildings

Compartmentalisation

- Parts B3 and B4 involve considering compartments in buildings
- Compartmentation therefore needs to be protected - especially if breached to install services.
- Stay put policies are usually appropriate where compartments have not been breached and there are no failings in the construction of the block or any works to it.



Other legal obligations on landlords

Gas Safety (Installation and Use) Regulations 1998

- Gas fittings and flues are maintained in a safe condition (including communal areas)
- Gas appliances are serviced checked annually (Keep a record of the check for 2 years)

Electrical Equipment (Safety) Regulations 1994

- Ensure all electrical equipment supplied to tenants is safe i.e. will not have a risk of death or injury or damage to property.



Furniture and Furnishings (Fire) (Safety) Regulations 1998

- Furniture must be fire resistant and pass both the match test and cigarette test.
- Does not apply to furniture made before 1950, bedclothes, loose covers for mattresses, pillow cases, curtains, carpets or sleeping bags
- Have a fire protection scheme:
 - Alarm to detect fire
 - A Safe escape route which is well lit
 - Fire fighting equipment (e.g. extinguisher and fire blanket)

More legal obligations

■ Defective Premises Act 1972

- A duty is imposed on a Landlord to a Tenant for maintenance or repair of the premises, and to others reasonably expected to be affected by defects to:



- take such care as is reasonable in all the circumstances to see that persons are reasonably safe from personal injury or from damage to their property caused by a defect.

Must have knowledge of the defect, or ought to have known about the defect.

- The defect must result from a failure to carry out repairs/maintenance works not design or inherent defects (e.g. cladding systems)

More legal obligations...

■ Defective Premises Act 1972 (Continued)

- If notified of a defect use right of entry clauses in the contract (if one exists) to undertake maintenance/repair works.



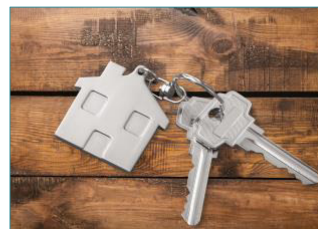
■ Occupiers Liability Act 1957

- Duty imposed on the landlord:
 - Responsibility for common parts of the building
 - Will be deemed to be an occupier for the purpose of this Act if they have sufficient physical control over the premises to be able to ensure the safety of the premises
- However, liability for this Act has been repealed by the Defective Premises Act. If this does not apply then there is a common law duty of care to take reasonable care not to create an unnecessary risk of injury.

And some more ...

■ Landlord and Tenant Act 1985

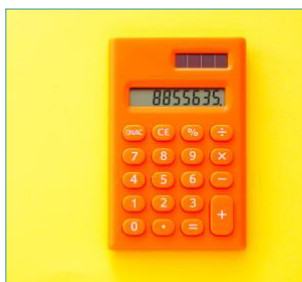
- For all tenancies less than 7 years, the Landlord has a duty to:
 - Keep in repair the **structure and exterior** of the dwelling house
 - Keep in repair and proper working order the installations in the dwelling house for the supply of water, **gas and electricity** and for sanitation
 - Keep in repair and proper working order the installations in the dwelling house for space heating and heating water
- Rights of access can be tricky
- Mixed tenure can also pose problems



And don't forget Common Law!

■ Common Law Negligence

- Is there a duty of care owed to the tenant?
- Has there been a breach of that duty?
- Has the breach of duty caused a loss?
 - The loss can be personal injury (including death) or damage to property



Guidance is available to help you!

Legislation/Regulation	Guidance Available
Building Regulations	Approved Document B
Housing Act 2004	Housing Health and Safety Rating System – Operating Guidance
Regulatory Reform (Fire Safety) Order 2005	Fire Safety Risk Assessment – Sleeping Accommodation (DCLG) Fire Safety in Purpose-Built Blocks of Flats (LGA)
Gas Safety (Installation and Use) Regulations 1998	HSE Website

Regulatory Requirements

HCA Regulatory Standards

Governance Viability standards

- Governance & financial viability, Value for money and Rent Standards
- Don't apply to local authorities (or therefore ALMOs)

Consumer standards

- Tenant involvement, Home, Tenancy (ie tenure) and Neighbourhood Standards
- Apply to both local authorities (and therefore ALMOs) and registered providers



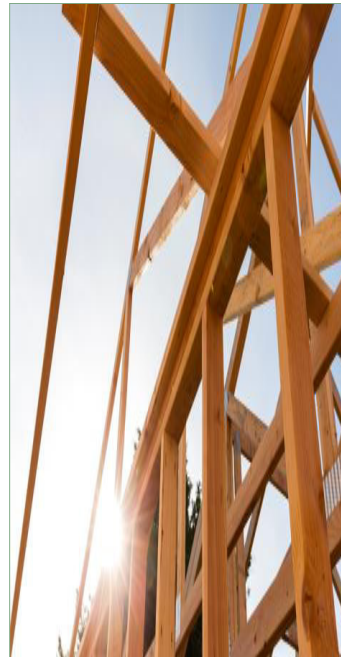
Consumer standards

Home Standard

- Must maintain to Decent Homes standard
- Must meet all applicable statutory requirements

HCA can only use enforcement powers for a **consumer standard** where

- **serious detriment to tenant**
- **serious risk of serious detriment to tenant if no action taken**



Serious detriment

Decided on a case by case basis by HCA

HSE will assist HCA where appropriate

Duty on RPs to communicate with HCA “in a timely and transparent way”

- Judgement call when and how to refer

Board expected to have oversight of health and safety issues

HCA action on Consumer Standards increasingly seen as a governance failure





Where are the gaps in the current legal framework?

Issues with current legal framework



- There is confusion over the scope of the legislation: how it relates to those who live in flats, and indeed, to what extent, if any this legislation can require improvements beyond the entrance doors of flats
- Enforcing authorities are often unfamiliar with the particular issues that can be found in existing specialised housing

Compartmentalisation (Revisited)

- How do we monitor whether a compartment has been breached?
- Who will be at fault if the compartment is breached?



Front Doors of Flats

- Big area of contention: who owns the door?
- Leases do not always make this clear for Leaseholders
- If the responsibility for the door rests with the Tenant then the Landlord has no right to force the Tenant to upgrade a door or carry out the works unilaterally



Resident Behaviour (beyond the communal areas)

- It is not possible to control Residents within their homes
- Some risks from Tenants are:
 - Knowing all occupants and their needs
 - The use of candles
 - Mobility scooters
 - Propping open fire doors
 - Hoarding
 - Untested/Non Compliant Electrical Equipment
 - Blocking escape routes



What can be done to reduce these risks?

Cladding Systems



- Currently, many social housing providers are removing and recladding their buildings
- Of 7 types of ACM Cladding tested 4 'failed to comply'. It is thought that these types of cladding exist on 165 social housing towers
- This will impact on budgets in the absence of successful recovery action

What is currently happening?

Independent Review of Building Regulations and Fire Safety

- Will make recommendations that will ensure we have a robust regulatory system for the future
- There will be a focus on multi-occupancy high-rise residential buildings
- Interim Report – Autumn 2017
- Final Report – Spring 2018

Public Inquiry into the Grenfell Tower Fire

- Will look at the responsibility and accountability for safety at all stages of the building/refurbishment of a building
- Review of the inspection and quality assurance regimes
- There are 125 issues to be looked at

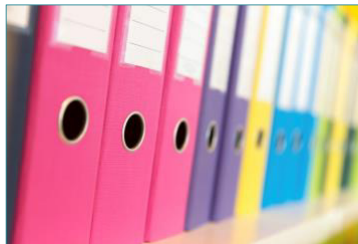
DCLG Published Expert Views from National Fire Chiefs Council

- Providing update and advice for building owners and local authorities

What to do when things go wrong

Steps that can be taken

- It is possible in some cases to take enforcement action against Residents. This may be necessary in order to ensure that you are meeting your obligations.
- Consider using your rights of entry, where possible, and if necessary in order to ensure Residents are being compliant.



Steps that can be taken

- Review contract terms to require contractors to warrant that no fire stopping or compartments have been breached by works and to provide evidence.
- Consider generic terms and specific terms and requirements re quality assessment in specifications
- Review contract monitoring



Steps that can be taken

- Check data that you hold in relation to ALL properties (Gas Safety Certificates)
- Complete Fire Risk Assessments on time and to the required standard.
- Consider carefully process for correcting defects
- Consider whether costs can be recovered from the original contractor/consultants



Questions?



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Andrew Lancaster
Partner

Tel: 0121 212 7421

E-mail: andrew.lancaster@anthonicollins.com

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Anthony Collins
solicitors

Anthony Collins Solicitors LLP
134 Edmund Street
Birmingham B3 2ES
MDX 13055 Birmingham I
Tel: 0121 200 3242
www.anthonicollins.com