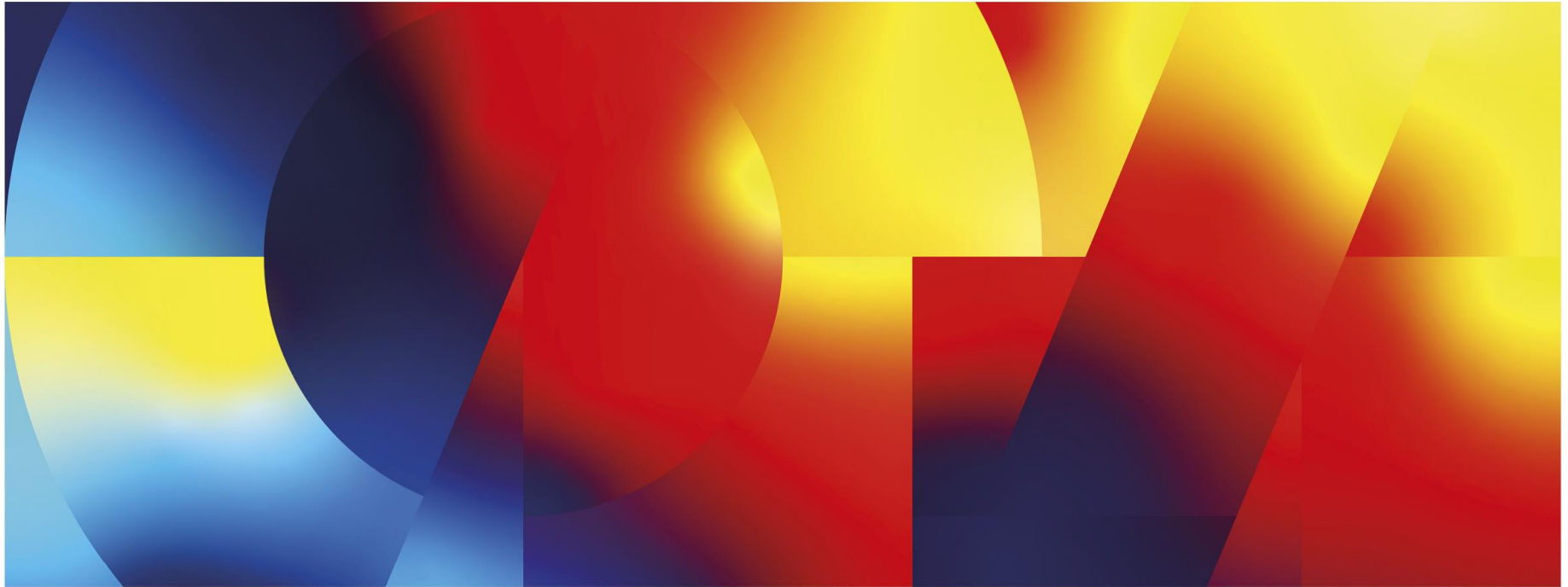


19 October 2023

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# Housing Management Law School



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# News Round-Up

# Damp and Mould in the Home

*Following the coroner's findings in the Awaab Ishak inquest, two publications were released in September 2023 to assist landlords and tenants in understanding and addressing the health risks of damp and mould in the home.*



Department for Levelling Up,  
Housing & Communities



Department  
of Health &  
Social Care



UK Health  
Security  
Agency

Guidance

## Understanding and addressing the health risks of damp and mould in the home

Published 7 September 2023

Policy paper

## Summary report: outcomes and next steps for the review of the Housing Health and Safety Rating System (HHSRS)

Published 7 September 2023

# Guidance: Understanding and addressing the health risks of damp and mould in the home

- Primarily aimed at social housing providers and their workforce.
- Sets out expectations of how landlords and providers should respond to reports of damp and mould
- **Legal Standards for Housing Providers:**
  - All homes must be free from hazards at the most dangerous 'category 1' level
  - All homes must not contain conditions that are prejudicial to health
  - Homes must be fit to live in
  - Social housing specifically must meet the Decent Homes Standard
  - Privately rented homes must meet minimum energy efficiency standards



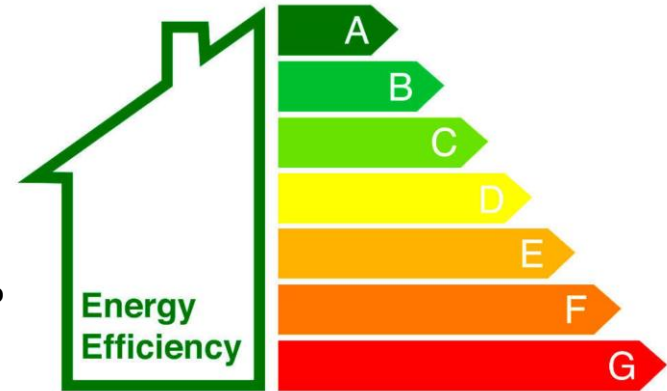
# Policy Paper: Summary Report – Outcome and next steps for the review of the Housing Health and Safety Rating System (HHSRS)

- Amalgamating some of the 29 hazards within the HHSRS – now 21 hazards.
- Changing rating system from a range of “Class I – IV” to “extreme” – “moderate”.
- Released with a view to publish a new statutory operating and enforcement guidance including a set of new case studies.



# The Scrapped EPC Reform

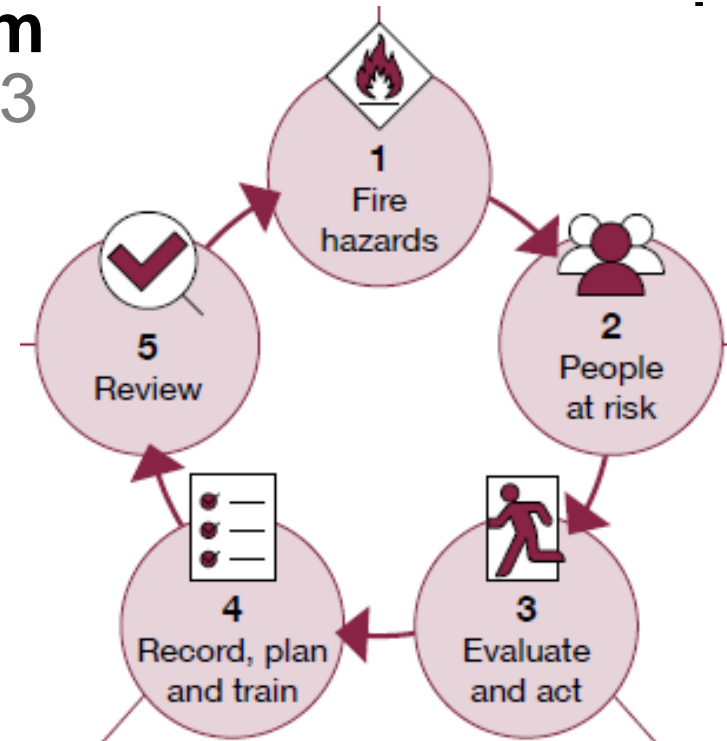
- Initially part of Government plan for all social homes to be minimum EPC C by 2030 to help “decarbonise by 2050”.
- No longer a requirement for landlords to upgrade their properties to a minimum of EPC Grade C
- Would have cost an average of £7,646 to make relevant upgrades to homes (National Residential Landlord’s Association)
- Onus put back on tenants – Government promising a 50% increase in grants to help families replace boilers to the amount of £7,500.



# Fire Safety Legislation Reform

## Came into force 1 October 2023

- S.156 [Building Safety Act 2022](#) amends the [Regulatory Reform \(Fire Safety\) Order 2005 \(FSO\)](#)
- Section 156 of the Building Safety Act 2022 updates the requirements around the performance of fire risk assessments and the provision of information to tenants about fire safety risks.
- Has implications for landlords who have control over the communal parts of buildings (the Responsible Person)
- This is in addition to the information that you are already required to provide because of the Fire Safety (England) Regulations 2022.



**Government 5-step checklist for completing a fire safety risk assessment**



# ***Tower Hamlets Community Housing v The personal representative of Joseph Desir & Ors. 19 April 2023***

## **Creation of new tenancy on rent increase**

- County Court possession case
- Tenants Mr and Mrs Desir died in 2020. Daughter applied to succeed as had lived with them for 10 years as a carer.
- S13 Notice of Rent Increase served by Tower Hamlets Community Housing in May 2021
- Tower Hamlets Community Housing then brought possession proceedings.
- Daughter defended on grounds of succession and the fact that the rent increase created a new tenancy
- District Judge agreed that a new tenancy was created as of date of increase of rent (5 April 2021)
- Possession claim was dismissed

**Claim form for possession of property**

In the

Claim no.

Fee Account no.

You may be able to issue your claim online and it may save you time and money. Go to [www.possessionclaim.gov.uk](http://www.possessionclaim.gov.uk) to find out more.

Claimant  
(name(s) and address(es))

Defendant(s)  
(name(s) and address(es))

The claimant is claiming possession of:

which (includes) (does not include) residential property. Full particulars of the claim are attached.  
(The claimant is also making a claim for money).

This claim will be heard on:  20 at  am/pm  
at

**At the hearing**

- The court will consider whether or not you must leave the property and, if so, when.
- It will take into account information the claimant provides and any you provide.

**What you should do**

- Get help and advice immediately from a solicitor or an advice agency.
- Help yourself and the court by **filling in the defence form** and **coming to the hearing** to make sure the court knows all the facts.

Defendant's name and address for service

Court fee

Legal representative's costs

**Total amount**

Issue date

SEAL

NE Claim form for possession of property 05/14 © Crown Copyright. Reproduced by Thomson Reuters (Professional) UK Ltd.

# ***Wilson v Wilson & Anor (2023) EW Misc 5***

County Court – unlawful deprivation of occupation

- Claim involving:
  - Section 27 Housing Act 1988
  - Section 28 damages Housing Act 1988
  - Proprietary estoppel



## **Conclusion - Found the claimant was able to show, on the balance of probabilities that:**

- Defendants unlawfully deprived her of occupation of the Property (damages in sum of £148,000)
- Reliance on a promise leading to expenditure on renovation and decorating (£73,000)
- **Total judgement: £221,000 + Costs**

# Housing Loss Prevention Advice Service (HLPAS)

- Replaces the Housing Possession Court Duty Schemes (HCPDS) which was only available on the day of the hearing.
- Aims to give tenants better access to legal support in housing matters.
- This service is only active until after the first full hearing. Should possession defences require a second or third hearing the tenant will have to qualify for legal aid or hire a solicitor themselves.





**Hot Topic**  
The Renters Reform Bill

# The Renters Reform Bill

- Proposed legislation
- Main proposals:
  - Scrap ‘no fault’ evictions – new mandatory grounds of possession
  - Register of landlords
  - Private rented Ombudsman
  - Illegal for landlords and agents to refuse rent properties to those receiving benefits
  - Give local authorities more power to enforce and protect renters’ rights
  - Abolishment of rent review clauses
- Michael Gove pledge this Bill would be introduced in “a couple of months”



# Renters (Reform) Bill for Registered Providers

- Currently at its second reading
- Potential to be one of the biggest reforms of the English rental market we have seen in recent years
- The Bill is split into two distinct parts:
  1. Reforms to assured tenancies
  2. A system for accountability to regulate the sector and enhance tenant protection



## Renters (Reform) Bill for Registered Providers

### Key provisions

1. Abolishment of section 21 'no fault' evictions
2. Abolishment of fixed term assured tenancies
  - All tenancies are to be periodic
  - simpler, more secure tenancy structure.
  - shared ownership leases no longer be classed as assured tenancies.
3. No more "starter tenancies"
4. Strengthening of grounds for possession:

## Renters (Reform) Bill for Registered Providers

New, or amended, possession grounds include:

- If the tenant is repeatedly late in paying rent;
- If the landlord wishes to sell the property;
- If tenants do not have a right to rent;
- Breach of tenancy; and
- Deterioration of the property.



## Renters (Reform) Bill for Registered Providers

### 5. Rent Review

- Landlords may only propose a new rent once a year
- 2 months' notice
- No rent review clauses in tenancy agreements.
- Challenge to First Tier Tribunal (Property Chamber).

## Renters (Reform) Bill for Registered Providers

### 6. Redress system

- Landlord redress system
- New Ombudsman
- Landlord database.
- Two-tier system of fines and criminal offences for landlord non-compliance.
- Penalties for landlords not registering or joining a redress scheme.

## Renters (Reform) Bill for Registered Providers

### 7. Other provisions

- Notice periods reduced for "irresponsible" tenants
- "Right to request to keep a pet",
- Amend the Tenant Fees Act 2019 : landlords can require pet insurance for damage

# Questions and answers

# Revision Subject: Video Evidence



## Video Evidence

1. GDPR and Data Protection Considerations
2. Case Study: Fairhurst v Woodard
3. What should landlords consider?
4. Use of CCTV in Anti-Social Behaviour cases
5. Case Study: Molloy v BPHA
6. CCTV in care homes

# Data Protection Considerations

## Who is Responsible?

- Section 3 [Data Protection Act 2018](#) defines personal data broadly as “any information relating to an identified or identifiable living individual”
- GDPR applies to the processing of personal data that is:
  - Wholly or partly by automated means; or
  - The processing other than by automated means of personal data which forms part of, or is intended to form part of, a filing system.



# Fairhurst v Woodard

## Case Study

- Defendant placed several cameras around property, including a “Ring” doorbell with video and audio recording abilities. Cameras also overlooked shared access road leading to a communal car park. He claimed these were all for security purposes.
- Claimant complained over breach of privacy. Defendant “boasted” to the Claimant that he could view footage at any time on his mobile or smart watch.
- 3 causes of action brought by Claimant for:
  - Nuisance (failed)
  - Data Protection (succeeded)
  - Harassment (succeeded)





# What do landlords need to consider?

If installing your own CCTV or receiving footage from others – will be subject to data protection law and must strictly comply with GDPR

- Justify the use of CCTV and its location
- Consult affected tenants
- Complete an impact assessment
- Put up appropriate signage
- Respond appropriately to requests for footage
- Consider security and storage arrangements
- Factor use into company policies / procedures



# Can CCTV/Ring door bells be used as evidence in Anti-Social Behaviour cases?

- If recorded content is within curtilage of tenant's property, likely to be fine.
- If footage extends, there are circumstances where privacy intrusive CCTV can be justifiable in court.

## **If putting up CCTV / you are asked by a tenant if they can install CCTV, you should consider:**

- Factor this into company policies and procedures
- Consider agreeing locations and avoiding communal areas (except in extenuating circumstances)
- Talk to neighbours before installing CCTV to deal with any concerns they may have

# Molloy v BPHA

## Case Study – can footage from CCTV be used as evidence in ASB cases?

- Mr Molloy = tenant of BPHA
- BPHA = Housing Association
- Mr Molloy racially abused his neighbours from his garden.
- Neighbours installed CCTV, which was used as evidence in court.
- Mr Molloy appealed on the basis that the CCTV footage breached his privacy and family rights.
- The Court concluded that Mr Molloy's behaviour justified a departure from the normal entitlement to privacy.



**The general rule is that if the CCTV is within the curtilage of the tenant's property, there is no issue. Care should be taken where footage extends beyond this – however there are circumstances where such evidence will still be considered.**

# Using CCTV in Care Services

- Difficult balance between a residents' dignity and right to privacy, and the need for them to receive adequate care
- Care Quality Commission has recognised that non-covert cameras may be the best way to ensure safety and quality of care
- Recommended to consult with care provider users, and residents' families / visitors.
- GDPR – Should always comply with the principles and consider whether the data is being collected for **“specified, explicit and legitimate purposes”**
- Consider carefully who has access to the CCTV and for what reasons
- Ensure appropriate policy is in place with guidance for staff.
- If resident lacks capacity – may need to consider applying for relevant authorisation as this may amount to deprivation of liberty.

**Thank you**

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