

AnthonyGold



After Grenfell: Housing standards and safety

Giles Peaker
20 September 2017

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What is the problem?

Following Grenfell, the Chalcots, and the Ledbury Estate, it is clear that fire safety in building construction and structure is a very major problem.

It is also clear from the experience of Grenfell tenants that where they had real concerns, there was no way for them to make those concerns be addressed by their landlord or the agent.

Questions of property standards

Questions of accountability and enforceability

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Current law: What have we got?

Section 11 Landlord and Tenant Act 1985.

Disrepair to structure, exterior, space heating, gas, water and electricity.

Via s.11(1A) applies to all parts of building in which landlord has an interest.

Enforceable by tenant as implied term of tenancy.

Does not catch safety or fitness issues unless 'out of repair'

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Current law: What have we got?

Defective Premises Act 1972

Sections 1 and 4.

Section 4 gives liability to tenant/occupiers for loss, but only for 'defect' where LL has repairing responsibility. So doesn't cover non-disrepair risks (eg Sternbaum v Dhessi [2016] EWCA Civ 155 & Dodd v Raebarn Estates Ltd & Ors [2016] EWHC 262 (QB))

Section 1 – 'duty to build dwellings properly'. Includes 'conversion'. Gives liability against 'a person taking on work in provision of a dwelling', if premises 'unfit for habitation' when completed. Would arguably include landlord if LL arranged for construction. But strict 6 years limitation from completion of works and only if the demise unfit.

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Current law: What have we got?

Common law nuisance and Sections 79 & 80 Environmental Protection Act 1990 – tenant action

Only applicable where premises are affected, either by interference from other land, or where 'premises in such a state as to be prejudicial to health or a nuisance'.

Not effective for a safety risk, or often for a structural design issue.

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Current law: What have we got?

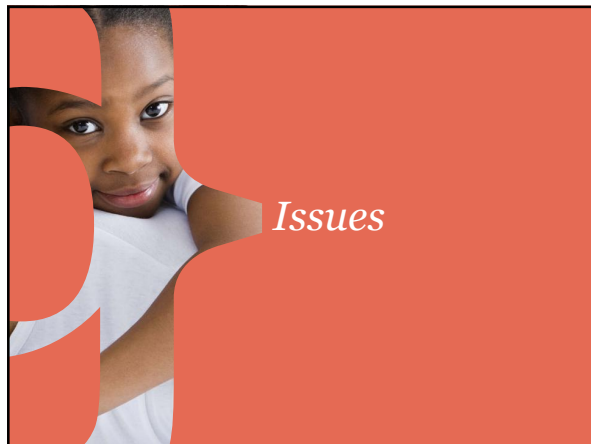
Housing Act 2004 and Housing Health and Safety System (HHSRS).

'Risk based' approach. Encompasses repairs, health risks, nuisances, fitness for habitation and safety standards, including fire safety.

Range of enforcement options, setting out required works to reduce risk.

But – only enforceable by Local Housing Authority.

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Issues

No way for tenants to enforce fitness or safety standards to their property or to the building, unless there is relevant disrepair or nuisance.

HHSRS is more wide ranging, and can encompass fitness and fire safety.

However:

Completely reliant on Local Authority enforcement practices (generally poor), and

Completely useless for Local Authority tenants (and, in practice, all social tenants)

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Leaseholders

Landlord repairing obligations – express lease clauses only.

No section 4 DPA unless express LL repair obligation to the demise (unlikely)

No HHSRS/Housing Act 2004

Service/works charges – consultation on works under section 20 Landlord and Tenant Act 1985, but limited as to extent of consultation and no binding effect.

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Leaseholders

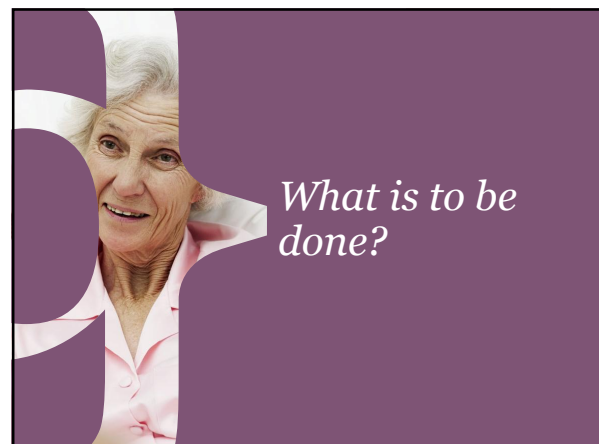
Works may result in major works charge to leaseholders (depending on lease clauses, works of repair or improvement).

Leaseholders' interests can therefore be directly opposed to those of tenants.

Extent of demise. For example, who owns entrance doors, or windows?

No right of landlord to add fire safety fittings – eg sprinklers – inside demise.

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Options for reform?

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Shelter commissioned report on possible options for reform.

Full scale reform of housing law? (Renting Homes (Wales) Act – as based on Law Commission, but still not implemented, because difficult). An overall scheme. But doubtful if political will to embark on such a huge project.

Pilot project combining county court and First Tier Tribunal jurisdiction in some matters. But no associated law reform, and issues around legal aid, costs and other concerns.

Likely that any options for change will be somewhat piecemeal

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Options for reform?

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Some suggestions:

A revised version of section 20 Landlord and Tenant Act – extend consultation on major works/refurbishments to direct tenants (with some form of penalty for failure to comply).

This will not change the tenant/leaseholder conflict of interest, however.

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Amend the Defective Premises Act 1972 so that a 'relevant defect' includes where condition of building amounts to a risk to health and safety of occupier/visitor.

But – this would only give rise to damages for loss or injury after the event. Merely a potential 'deterrent effect' on issues arising or not being addressed.

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Options for reform?

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And then...

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Options for reform?

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Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill – Karen Buck MP, of course.

Second reading January 2018.

What does the bill do?

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As currently drafted...

Removes rent limits from section 8 Landlord and Tenant Act 1985 so:

Implied terms as to fitness for human habitation.

- (1) In a contract to which this section applies for the letting of a house for human habitation there is implied, notwithstanding any stipulation to the contrary—
- (a) a condition that the house is fit for human habitation at the commencement of the tenancy, and
 - (b) an undertaking that the house will be kept by the landlord fit for human habitation during the tenancy.

Amended, it will apply to any tenancy of less than 7 years,

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Options for reform?

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Fitness? Existing s.10 L&TA 1985:

Fitness for human habitation.

In determining for the purposes of this Act whether a house is unfit for human habitation, regard shall be had to its condition in respect of the following matters—
 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 waste water;
 and 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.

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Amended version

- (4) Amend section 10, Landlord and Tenant Act 1985 as follows:
 (a) after “facilities for preparation and cooking of food and for the disposal of waste water” insert “any other matter or matters that may amount to a Category 1 hazard under section 2 Housing Act 2004”.

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Amended version – key new addition (as per s.11)

- (7) If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then the covenant implied by subsection (3) shall have effect as if the reference in that subsection to the dwelling included a reference to any part of the building in which the lessor has an estate or interest.

This should cover safety issues in the building as a whole, if owned by the same landlord.

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Defences:

- (4) The implied covenant shall not be taken to require the lessor—
 (a) to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on his part,
 (b) to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident,
 (c) to keep in repair or maintain anything which the lessee is entitled to remove from the dwelling-house,
 (d) to carry out works or repairs which, if carried out, would put the lessor in breach of any obligation imposed by statute or subordinate legislation;
 (e) to carry out works or repairs which require the consent of a superior landlord and which consent has been refused (whether reasonably or otherwise).

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Advantages:

Makes any Category 1 HHSRS hazard actionable by tenant and includes risks that are not disrepair or nuisance.

Extends responsibility to building as a whole where landlord has sufficient interest (*Edwards v Kumarasamy* [2016] UKSC 40)

Legal Aid would be available (for works) under LASPO Schedule 1, s.35(1) in some circumstances.

- (1) Civil legal services provided to an individual in relation to the removal or reduction of a serious risk of harm to the health or safety of the individual or a relevant member of the individual's family where—
 (a) the risk arises from a deficiency in the individual's home,
 (b) the individual's home is rented or leased from another person, and
 (c) the services are provided with a view to securing that the other person makes arrangements to remove or reduce the risk.

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Disadvantages

In practice, relies on tenant being able to access both legal assistance and (in many cases) expert evidence.

Relies on experts able to conduct HHSRS assessments

Not retrospective (as implied contractual term, it can't be).

Not clear yet how Wales propose to deal with suitability in the regulations to follow Renting Homes.

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One more thing...

Bill also requires the Secretary of State to make regulations within 12 months to give effect to section 38 Building Act 1984:

(1) Subject to this section—
(a) breach of a duty imposed by building regulations, so far as it causes damage, is actionable, except in so far as the regulations provide otherwise, and
(b) as regards such a duty, building regulations may provide for a prescribed defence to be available in an action for breach of that duty brought by virtue of this subsection.

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So, a direct cause of action for damage (including death or injury) caused by a breach of building regulations.

No need for negligence, etc.

This has languished on the statute books since 1984...

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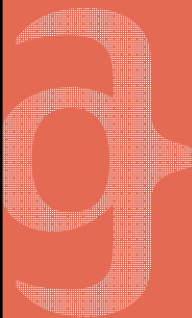
Second Reading 19 January 2018

Will need 100 MPs attending to force vote (the Philip Davies effect)

Lobby away...

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Fingers crossed...