



# HOUSING CONDITIONS

For non tenant occupiers

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## Overview

Remedies in respect of conditions in accommodation provided to destitute vulnerable adults and families under:

- S17 Children Act 1989
- Care Act 2014
- Asylum Support arrangements under IAA 99

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## Examples

- shared facilities
- accommodation not suitable to needs (e.g. because of a disability / other protected characteristic)
- location
- poor quality accommodation – e.g. damp, overcrowded, suffering from infestations etc.
- unlicensed HMO accommodation
- unlicensed accommodation where local licencing in force

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## Asylum Support

IAA 99 requires any accommodation provided under s95 to:

- Be “adequate for the needs of the supported person and his dependants (if any)” (s96 (1)(a))

Note that if the Secretary of State is unable to identify adequate accommodation via its normal providers, there is a power to source accommodation from Local Authorities and other housing providers to meet this duty.

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## Asylum Support cont.

- S55 of the Borders, Citizenship and Immigration Act 2009
  - Home Offices must carry out its functions in a way that takes into account the need to *safeguard and promote the welfare* of the children in the UK
- Reg 4 of the Asylum Seekers (Reception Conditions) Regulations 2005 SI 2005/7
  - Require the Secretary of State to accommodate families together and to take into account the needs of vulnerable asylum seekers.

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## S17 Children Act 1989 & Care Act 2014

No specific accommodation related provisions

- Challenges will be to the rationality and adequacy of any assessment and the services identified in any plan arising from the assessment
- Where children involved – s11 Children Act 2004 may assist – as all functions must be discharged “**having regard to the need to safeguard and promote the welfare of children**” – see notes on p 2 re R(S and J) v Haringey LBC
- In Care Act cases, the Equality Act 2010 and in particular the PSED may assist

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## Housing Act 2004

- The HHSRS
- The HMO licencing provisions

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## HHSRS

### Housing Health & Safety Rating System

- 29 hazards
- Inspection duties and powers
- Official complaints
- Category 1 – Local Authority must act
- Category 2 – Local Authority may act
- Remedies include
  - Improvement notice
  - Prohibition order
  - Hazard awareness notice
  - Emergency remedial action
  - Demolition order

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## R (MW) v SSHD CO/108/2020

- S95 accommodation for MW and her two children
- One room, with sleeping and cooking facilities
- Report from Bristol CC found category 1 hazards
- Rolled up permission hearing
- Settled when SSHD agreed to provide suitable safe alternative accommodation and pay Claimant's costs

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## Tips on using HHSRS

- develop relationships with the Local Authority environmental health / private sector standards team
- know how to use the teams and obtain an inspection
- consider official complaints
- invite team to local advice sector meeting to give a talk about their work
- get clients to measure the rooms and take photographs as evidence for the inspection team
- get familiar with space and other standards in the 2004 Act
- get the evidence before issuing judicial review
- same approach can be used in homeless suitability reviews

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## HMO licencing

Part 2, 2004 Housing Act sets out framework for identifying and licencing HMOs.

- *The rationale for licencing Houses in Multiple Occupation is that they are often in poor condition and represent a much higher risk to the safety and welfare of the occupants. Poor management and the presence of unscrupulous landlords can also increase the likelihood of health and safety risks developing for tenants, even when the HMO is in an acceptable state of repair. Many HMOs also house some of the most vulnerable members of society who most need protection from poor physical conditions.*

[explanatory memorandum to 2006 regulations para 26]

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## What is an HMO

The definitions are complex and can be found in ss 254 – 259 of the 2004 Act. For the purposes of this seminar – generally a place will be an HMO if it is:

- a building or flat in which 3 or more occupants, comprising more than one household share a basic amenity such as a bathroom, toilet or cooking facilities or the accommodation lacks one or more of these amenities
- the building is the occupant's only or main residence
- rent is payable for at least one person's occupation

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## HMO licencing

- Mandatory licencing – s61 2004 Act
  - Where an HMO meets the
    - Standard test or
    - Converted building test or
    - Self-contained flat test (unless purpose built flat within a block comprising 3 self-contained flats or more)
- Additional licencing schemes – s56 2004 Act
  - Where a Local Authority adopts a scheme which requires the licencing of properties that are not covered by mandatory licencing
  - Tends to be used where significant proportion of HMOs are poorly managed, causing problems for residents or general public

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## Titiloye v Southwark 2018

- T and her two children were provided with a single room in a flat with 5 rooms and occupied by 5 separate households under s17 Children Act 1989
- Southwark had adopted additional licencing scheme and prescribed minimum standards for HMOs in the area
- The property had no HMO licence and breached those minimum standards
- In pre action protocol correspondence Southwark refused to recognise the flat as an HMO on the basis that T and the other occupants were not occupying the accommodation as their only or main “residence”
- T issued a claim for judicial review

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## Titiloye continued

- 2 days before Southwark’s AOS was due, Southwark moved T and her children to self-contained accommodation and invited T to withdraw her claim on the basis it had become academic
- T continued the claim – on the basis that her claim was dealing with a systemic problem
- A FOI response had shown that there were 184 other families being accommodated under s17 by Southwark, 153 of whom were sharing facilities, on average for 20 months. Of those, 63 were accommodated in Southwark, and of those fewer than 10 had an HMO licence.
- The claim was settled – Southwark agreeing that the property required a licence and that families in s17 accommodation were generally occupying as their only or main residence.

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## HMO tips

- If your client is sharing facilities – do the premises meet the statutory definition of an HMO?
- If so, are the premises subject to licencing, either because they meet the statutory criteria or because the Local Authority has adopted an additional licencing scheme for HMOs
- Is the property licenced (you can normally check online)
- Does it meet the criteria to have a licence (there are statutory minimum size and other criteria)
- Is there a local policy giving additional criteria for the licencing / approval of HMOs
- Get your client to measure the room/s and obtain detailed instructions about how the HMO is occupied, managed etc.
- Use the Land Registry to identify ownership
- Use FOI requests to see how widespread the issue is

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## HMO prosecutions

### s72 Housing Act 2004

- A person commits an offence if he is a person having control of or managing an HMO which is required to be licenced under this Part... but is not so licenced.
- Clearspring Ready Homes were found guilty of this offence, plus failing to produce documents as required under s235 of the Act and failure to ensure firefighting equipment and fire alarms were maintained in good order on 21/10/21 at Newport Magistrates Court and fined £60,586.25.

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## The EPA 1990

The Environmental Protection Act can be used by non tenant occupiers and Local Authorities to force landlords and providers to carry out necessary works and improve the condition of the property they own or manage.

There must be a “**statutory nuisance**” for the EPA to apply. For the purposes of this session this means:

**“Any premises in such a state as to be prejudicial to health or a nuisance”**

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## Key Concepts

### Premises

- All land and vessels

### In such a state

- The state of the premises as a whole is such as to be prejudicial to health or a nuisance – ie the effects of the defects rather than the fault itself.

### Prejudicial to health

- Injurious or *likely* to cause injury to health. Where state of premises would cause a well person to become ill or the health of a sick person to deteriorate. E.g. dampness, mould, infestations...

### Or a nuisance

- Public – adversely affects quality of life of public generally or class of citizens
- Private – substantial interference with use and enjoyment of neighbouring property

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## Remedies

### Local Authority (s80)

- Abatement notice
- Action in High Court
- Emergency procedures including 9 day notice procedure after which Local Authority can carry out works and recover costs

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## Remedies

### Person Aggrieved (s82)

#### Prosecution in magistrates court to obtain

- Nuisance Order
- Compensation
- Costs
- Legal help for prep work
- No legal aid for litigation
- CFAs available
- Burden of proof of the statutory nuisance is to criminal standard

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## S82 process

- Notice to landlord that statutory nuisance exists giving 21 days to abate it
- File information and supporting documents at court
- Magistrates court issues summons and sets date for hearing
- If landlord pleads guilty a nuisance order is made
- If dispute on compensation and costs, hearing of those issues will be adjourned
- If landlord pleads not guilty, a trial is set
- If successful the trial will lead to a nuisance order, a breach of which constitutes a further criminal offence
- Nuisance orders are admissible in other civil proceedings

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## Article 8 & 14 ECHR

Conditions in asylum support or no recourse to public funds accommodation may give rise to discrimination claims if it can be shown that there is differential treatment based on for example national or social origin, birth or other status.

### Example:

The government has stipulated that eligible families in temporary accommodation under Part 7 Housing Act 1996 should not have to share facilities unless it is an emergency, and then not for more than 6 weeks on the basis that shared accommodation is harmful for children's development.

Why should the children of asylum seeking families, or families in s17 accommodation be subject to this harm?

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## Discrimination arguments

- Differences in treatment relating to benefits granted by the state which demonstrate respect for family life will fall within the ambit of A8 ECHR
- Provision of accommodation to destitute families under s17 Children Act 1989 or asylum support provisions clearly falls within the ambit of A8 for the purposes of A14 ECHR
- Once differential treatment is demonstrated, it is for the public authority to demonstrate that this is justified – ie that it is a proportionate means of achieving a legitimate aim.

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## PSED

S149 Equality Act 2010 may be used where the accommodation is provided under a public function, and provision of adequate accommodation, taking into account the occupier's protected characteristic/s would remove or minimise disadvantages suffered by persons who share a relevant protected characteristic.

Example – a provider only provides rooms in hostels where there are shared, mixed sex facilities.

This may be a breach of the PSED if an occupant is a woman who is a survivor of sex trafficking and requires single sex provision.