

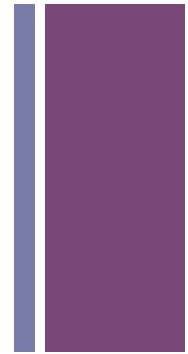
HHSRS & ENFORCEMENT ACTION

Steve Battersby

+ HHSRS & ENFORCEMENT ACTION

Introduction

- Function of HHSRS & key steps
- Errors, omissions or “slip ups” – leaving you vulnerable
- What to be aware of e.g. published guidance & information
- Tribunal
- Illustrated by some Cases

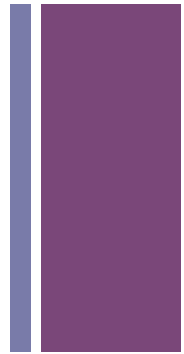


+ Some key steps

- HHSRS is means of assessing the risks to health and safety arising from deficiencies in the dwelling. So
 - Has LA gone through the necessary steps prior to taking the action including competent inspection?
 - Which the hazards have been identified and which have been rated?
 - Should LA take enforcement action – Duty or discretion?
 - If action to be taken, which is appropriate & how decided?

+ Some key steps

- Check hazard assessment reasonable? What are justifications for judgements and has the best available evidence been used (good reasoning set out now will help should there be an appeal)
- Role for “quality control”?
- How has decision on action been taken – can it be demonstrated that Enforcement Guidance taken into account? – Adequate & timely consultation but no undue delay.



+ Some key steps

- Are the works/remedial action specified proportionate to the risks identified
- Is statement of reasons adequate? – NOT a tick box approach
- Have the requirements of the legislation been met with respect to drafting etc



+ “Slip ups” (1): Noise Complaint & HHSRS

- Case Ref MAN/36UC/HIN/2010/ 0023
- HA Tenants of semi-detached house complain about noise from adjoining property converted to two flats (with Build Reg 2003 approval)
- EHO investigates whether appropriate to use Noise & Statutory Nuisance Act 1993 – complainant keeps diary – decided 1993 Act provides no remedy



+ Slips (1) Noise Complaint & HHSRS

- Noise considered to be Cat 1 HHSRS hazard – IN notice served on HA landlord of complainant
- Appeal – on grounds that owner of adjoining property should contribute to cost of works
- Tribunal decided Noise not Cat 1 hazard
- IN varied (Tribunal referred to other hazards arising such as fire and entry by intruders not identified by officers)



+ Slips (1) Noise Complaint & HHSRS

- LA's evidence included incorrect description of property - and that problem may be due entirely to lack of complete party wall (single brick) in roof space
- Remedial action (works) excessive for the risks
- So when specifying remedial action, is it proportionate to the risks identified?



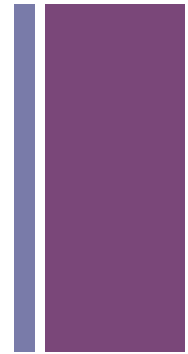
+ “Slip up” (2)

- MAN/OOBU/HEP/2013/0001
- Emergency Prohibition Order
- LA (T) had entered premises with F&RS subsequent to a fire
- Loft conversion where children sleeping did not comply with Building Regs
- T did not have right of entry (failed to comply with s239(6) so EPO invalid



+ “Slip up” (3)

- LON/OOBY/HIN/2012/0032
- Cat 1 Hazards- Crowding & Space & Excess Cold
- Cat 2 Hazards- Uncombusted fuel gas; Domestic Hygiene, pests & refuse; Falls between levels; Electrical hazards; Fire.
- Rather than serve notices, LA spent 20 months in correspondence with L/L
- Improvement Notice & HAN served eventually



+ “Slip up” (3)

- HHSRS assessments accepted
- Appeal against IN failed - however
- Tribunal “it does not assist the appellants to point out that the Respondent (LA) may have acted unlawfully in failing to take action in the past. They have now complied with their legal duty” ...achieving better outcomes by agreement may be achieved by delaying enforcement...after service not before”



+ “Slip up” (4)

- UT Neutral citation number [2012] UKUT 194 (LC)
- Appeal against the decision of the RPT of 15 March 2011, confirming a Prohibition Order
- LA did not wish to be party to the Appeal
- Appeal allowed
- Improvement Notice served month after PO for same hazard – cannot take two courses of action for same hazard
- LA had to reimburse hearing fee

+ “Slip up” (5)

- BIR/00GA/HIN/2012/014
- Appeal against Improvement Notice by residents (long leaseholders) of large property (six flats) – hazard of Fire
- HMO or not? Two or three storeys?
- At inspection the officers assessed the whole property (not HMO) and identified one Category 1 hazard - an approach at odds with the Operating Guidance
- Hazard scoring fundamentally flawed (Tribunal – no confidence in it)



+ “Slip up” (5)

- Remedial action specified work that could not be done by each flat owner as it related to premises over which they had no control
- Notice did not identify premises where hazard existed
- Notice did not specify the fire protection needed in sufficient detail
- Improvement Notice invalid & quashed and administrative charge cancelled



+ Guidance and its use

- Are you familiar with the Operating and Enforcement Guidance – go back and check it (remember Liverpool Excess Cold case in Upper Tribunal)
- If you use other credible Guidance such as LACORS ensure it is recorded
- How do you keep up-to-date with research on housing and health as Operating Guidance suggests?



+ First-tier Tribunal (Property Chamber)

- Appeals by way of re-hearing
- If charging keep records of how charge arrived at (best to avoid “fixed admin fee”)
- Understand the rules
- Avoid any errors that though trivial may give recipient chance to appeal
- Assemble all the evidence and marshal the arguments
- Double check to ensure evidence does not undermine your credibility

+ Lessons

- If Category 1 hazard, action has to be taken – it is always possible to vary a Notice if suitable alternative work/ remedial action proposed
- Don't take a “mechanical” approach
- Professional judgement is not the same as assertion or “we always do it this way”
- The Housing Act 2004 is not the best drafted piece of legislation, so be careful



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Remember - Mind your step!



Thank you

Any questions?

