

## **Awaab's Law: Consultation on timescales for repairs in the social rented sector**

**DLUHC. Issued 9/1/24**

### **Answers to the Consultation Questions on behalf of the Society of Labour Lawyers**

The Society of Labour Lawyers is the legal think tank of the Labour Party. It is the pre-eminent professional association for lawyers on the left of politics and supports the Labour Party in developing legal policy and advising on legal proposals. This response has been prepared by the housing and levelling up sub-group of the Society of Labour Lawyers. Many of us are practising lawyers, and our members also have wide-ranging expertise in housing and related areas of policy.

**Question 1.** Do you agree that Awaab's Law should apply to all HHSRS hazards, not just damp and mould? (Y/N)

ANSWER

Yes. By definition, as set out in the relevant legislation and recognised by para 55 of the Consultation paper, it is not only damp and mould which is hazardous to health.

**Question 2.** Do you agree the right threshold for hazards in scope of Awaab's Law are those that could pose a significant risk to the health or safety of the resident? (Y/N)

ANSWER

Yes with the qualification that while we agree that there should be a threshold we would prefer the threshold to be "any" risk rather than a "significant" one. What is or is not "significant" is inevitably a matter of perception (or, as the Consultation Paper puts it, at para 58, of "Judgement") by the deciding authority. Such a test will, we consider, lead to a range of different decisions on similar facts. What may not appear significant to one decision-maker may well appear significant to another. One area of water ingress through a roof or ceiling may not appear significant to one but significant to another on the basis that if not dealt with, it will develop into greater ingress. Such a subjective test is by its very nature problematic and would be assisted by acceptance of photographic evidence from the tenant both with regard to the significance of the risk (water ingress, mould, damage to belongings) and the level of harm (inhalers, medication, injury). This should be included in the regulations and/or guidance.

We assume that "resident" in the question refers to all the residents of the property in question eg the tenant, his/her partner and children and anyone else living in the property . The same assumption is made in respect of all these answers as necessary. If this is wrong,

we submit that the risks to health or safety must be in respect of any resident in the property, not just the tenant.

**Question 3.** If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text).

ANSWER

Not applicable. See answer to question 2.

**Question 4.** Do you agree with the proposal that social landlords should have 14 calendar days to investigate hazards? (Y/N)

ANSWER

Yes - subject to the provisions as to emergencies set out at paras 95-101 of the Paper. Further, In the event that the landlord is unable to identify the hazard[s] and therefore their cause(s) and remedies within the 14 and 7 day time limits proposed provision should be made for emergency decant (Qs 9,10, 18 and 20 and their Responses refer). Particularly with leaks in tower blocks, identification may take longer than 14 days.

**Question 5.** Do you agree that medical evidence should not be required for an investigation? (Y/N)

ANSWER

Yes. As well as the delay factor, local authority officers (in particular environmental health) are trained and experienced in deciding whether a condition requiring repair affects health. If the relevant private registered providers/housing association officers are not (although it is expected they are or will be) then they can and should be required by the proposed regulations to request appropriate LHA assistance. We also note and agree with para 65 of the Consultation Paper where it states "Therefore, whoever conducts the investigation will be expected to hold the right skills and experience to make this determination." Provision should be made for acceptance of medical evidence from both tenants (see Answer to Q2) and medics if readily available.

**Question 6.** If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

ANSWER

Not applicable

**Question 7.** Do you agree with the proposal for registered providers to provide a written summary to residents of the investigation findings? (Y/N)

Yes. This provides clarity as to the condition(s) that require remedy. Provision should be made for disclosure to tenants within 7 days of the conclusion of the investigation so that the residents may seek appropriate advice

**Question 8.** Do you agree with the minimum requirements for information to be contained in the written report? (Y/N)

ANSWER

Yes

**Question 9.** Do you agree registered providers should have 48 hours to issue the written summary? (Y/N)

ANSWER

No

**Question 10.** If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

ANSWER

We understand from the Consultation Paper Proposal 1 para 62 and Proposal 2 para 74 that registered providers have one period of 14 days from "being made aware" of a potential hazard to investigate and produce the written summary of findings etc and then 48 hours from conclusion of the investigation within which to provide the written summary to the residents. We consider that time scale unrealistic, particularly as works of varying extent may be required. We suggest 7 days from the conclusion of the investigation for the written summary to produced and provided to the resident(s).

**Question 11.** Do you agree with the proposal that if an investigation finds a hazard that poses significant risk to the health or safety of the resident, the registered provider must begin to repair the hazard within 7 days of the report concluding? (Y/N)

ANSWER

Yes - subject to the qualification in the answer to question 2 above and to the provision of emergency decant if the landlord fails to comply with the 7 day time limit.

**Question 12.** Do you agree that in instances of damp and mould, the registered provider should take action to remove the mould spores as soon as possible? (Y/N)

ANSWER

Yes - on the basis that by "as soon as possible" less than 7 days is meant. And that the work is effective to remove the mould permanently. Moreover "as soon as possible" and, in any event within 7 days, should be applicable in appropriate cases to a "significant risk to health and safety arising from any of the HHSRS hazards ( the answer to Question 1 above refers).

**Question 13.** Do you agree with the proposed interpretation of 'begin' repair works? (Y/N)

ANSWER

Yes - as at para 87 - worker on site physically carrying out remedial work.

**Question 14.** If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

ANSWER

Not applicable

**Question 15.** Do you agree that the registered provider must satisfactorily complete repair works within a reasonable time period, and that the resident should be informed of this time period and their needs considered? (Y/N)

ANSWER

Yes - but with the qualification that the proposed regulations provide for the 'reasonable time period' to be specified to the resident (as by a particular date or within particular number of days or months) after consultation with the resident. We do not agree that it is "impractical" to determine how long works may take to complete in respect of identified conditions. On the contrary it is common practice and contractors/surveyors are experienced in doing so. When orders for works are made following court proceedings the joint expert or experts invariably provide or agree a date which the court can then order or vary as the case may be. Should there be an over-run (for good cause) a further date can be agreed.

**Question 16.** If you have answered 'no' to the question in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

ANSWER

Not applicable

**Question 17.** Do you agree that timescales for emergency repairs should be set out in legislation? (Y/N)

ANSWER

Yes-for the sake of clarity. If necessary, they can be amended.

**Question 18.** Do you agree that social landlords should be required by law to action emergency repairs as soon as practicable and, in any event, within 24 hours? (Y/N)

ANSWER

Yes The resident(s) should also be informed in writing that this has been done.

**Question 19.** If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

ANSWER

Not applicable

**Question 20.** Do you agree that landlords should arrange for residents to stay in temporary accommodation (at the landlord's expense) if the property can't be made safe within the specified timescales? (Y/N)

ANSWER

Yes. In addition the proposed regulations should provide that the temporary accommodation be subject to certain conditions to avoid disruption, so far as possible, of the residents and to compensate for that disruption. The accommodation should be suitable as regards size and facilities, transport and location so that workplaces, shops, and schools etc are accessible. Removal expenses and return expenses should be covered and any other expenses

incurred by the removal and return process. Having regard to the last sentence at para 114 of the Paper, we would not expect these comments to be controversial.

**Question 21.** If you have answered 'no' to the question in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

ANSWER

Not applicable

**Question 22.** Do you agree that Awaab's Law regulations should include provisions for a defence if landlords have taken all reasonable steps to comply with timeframes, but it has not been possible for reasons beyond their control? (Y/N)

ANSWER

Yes on the basis that is the sole reason for non-compliance. As to the "refusal of access" scenario 1 set out in the paper, we observe that, in the experience of our members, actual refusal of access for works is rare in the extreme for obvious reasons. Mostly when refusal of access is alleged, that is down to attendance without giving notice or arranging a time. The proposals set out in the paper (para 110) should avoid that.

Likewise we consider that absence of appropriate expertise, labour or materials (scenario 2) should rarely be the case as, for example, the labour and materials required for the works contemplated are common to the construction industry-eg insulating material, moisture extractors, damp-proof coursing etc. Obviously, in such cases, the residents should be informed of the delay, the reasons for it and a fresh timetable agreed. If there is a challenge, the question arises as to how the decision about "all reasonable steps" to be made. We would propose a jointly agreed expert appointed at the landlord's expense.

**Question 23.** If you have answered 'no' to the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

ANSWER

Not applicable

**Question 24.** Do you agree with the assessment that proposals 1, 3, 4, 5, 6 and 7 will create small net additional costs to the sector? (Y/N)

ANSWER

Yes-with the qualification that there may well be no additional costs as repairs made in good time will avoid the expense of remedying more extensive disrepair at a later stag as well as the potential costs of court or other enforcement proceedings.

**Question 25.** If not, please can you provide additional information? (Free text)

ANSWER

Not applicable

**Question 26.** Do you agree with the assessment of the net additional costs of proposal 2? (Y/N)

ANSWER

We have no further comment to make on this topic.

**Question 27.** If not, please can you provide additional information? (Free text)

ANSWER

**Question 28.** Do you agree with the assumptions we have made to reach these estimates? (Y/N)

ANSWER

We have no further comment to make on this topic

**Question 29.** If not, please can you provide additional information? (Free text)

ANSWER

Not applicable

Additional Comments.

As is apparent from the above, the Society is broadly in support of the proposals made by the Consultation Paper. However, we consider that our response would be inadequate without making the following observations and proposals.

First of all, we note the existence of s 11 Landlord and Tenant Act 1985 (implied repairing covenants in short leases), the Environmental Protection Act 1990 ((Part. 3

statutory nuisances), the Housing Act 2004 (which established the “hazard” categories and the Housing Health and Safety Rating System - HHSRS) and the Homes (Fitness for Human Habitation ) Act 2018. These statutes all contain remedies for dampness and mould growth caused by excessive condensation and/or disrepair) in dwellings.

In addition a Housing Ombudsman service in respect of housing associations / private registered housing providers has been available since the coming into force of the relevant provisions of Housing Act 1996 and in respect of local housing authorities since 2013. Although even then we note that the Ombudsman currently has no power to enforce his or her findings. This may be remedied once clause 49 of the Renters' Reform Bill is in force, enabling the Ombudsman's order to be enforced as an order of the court. Nor is that jurisdiction appropriate for emergency cases. The Ombudsman procedure takes months at best in the experience of our members). The existence of all these provisions did not prevent the death of Awaab Ishak. Likewise, we are concerned that without more enforcement power/funding , neither will these proposed regulations, the subject of this consultation, or the other proposed aspects of Awaab’s law. More enforcement powers should be granted to the Ombudsman

So, secondly, for these proposals to be effective, there needs to be both awareness of the provisions and an **efficient enforcement machinery**, before the relevant legislation (primary and secondary) is in force. We note (para 18) that it is proposed to rely on s 25 of the Social Housing Regulation Act 2023 for the provision of information about these proposed regulations. That requires registered housing providers to give to their tenants (of “low cost rental accommodation”) information on their rights and how to make complaints.

We consider more specific steps as to these proposed regulations should be taken in order to bring them to the attention of those likely to be affected. Information should be distributed aimed at both landlords and residents and also to the public generally, through local authorities, landlords, tenants and residents associations, advice centres, law centres and national organisations such as Shelter. This can be organised by central or local government but if by local the central government should ensure that it has taken place. Without the knowledge, neither landlord nor resident will know what the system is and what they may expect to happen so as to be able to challenge when it does not deliver.

Thirdly, enforcement can be provided through the employment of the staff of the relevant local authority as surveyors, environmental health officers, departments of works etc who can inspect in order to ensure that works are properly identified and carried out according to the required procedure. It is vital that local authorities are able to employ sufficient staff to enable these functions to be performed. In the experience of our members, local authorities have been struggling for many years with the lack of such resources to enable their current powers and duties to be carried out. That needs to be remedied.

There is also a legal difficulty in that local authority officers are unable to serve statutory notices requiring works on their own local authority, even on a separate department (R v Cardiff City Council ex party Cross 1982 6HLR (Housing Law Reports) 1). Reversing that decision should be considered This, of course, does not apply to housing associations/private registered providers.

In this context we note that concern has been expressed by experienced environmental health officers about the review of the Housing Health and Safety Rating System (HHSRS) referred to at paras 36, 55 and 56 of the Consultation paper. Put shortly the concern is that the revision weakens the system so that conditions such as those that led to Awaab's death become more likely rather than less. In our view this aspect needs to be looked at and reconsidered.

Fourthly in the event that these proposed regulations are not complied with and repairs are not carried out, regrettably the only method to achieve that and for the residents to be compensated will be court proceedings. We note para 41 of the Paper refers to court proceedings as the means by which landlords are to be held to account in the event of non-compliance and that the court can make orders for works and compensation and award costs. However, it can reasonably be assumed that a high proportion (if not the majority) of the residents of the dwellings covered fall into the low income category. To commence and conduct proceedings legal aid will be required and should be made available (including for representation if the option of ADR eg mediation is taken). In this context we note that the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) allows for legal aid only if housing conditions lead to a "serious risk of harm to health and safety" (Schedule 1 para 35). As a result and also bearing in mind our answer to Q 2 above there is a potential conflict between "serious" and "significant". This needs to be clarified. In addition at present a claim is outside the scope of legal aid once works are completed, depriving the tenant of the means to obtain compensation. This, too, should be remedied.

Finally this consultation particularly concerns the social housing sector. We see no reason why a similar scheme should not apply to the private sector where conditions are even worse. Asylum seekers who are housed in the private sector prior to an initial determination on their asylum claim are also excluded from the protection against poor housing conditions offered by Awaab's Law.