

How are NCC and YHN ensuring that properties meet the Homes (Fitness for Human Habitation) Act 2018?

1. Why we chose to scrutinise this topic

Under the Homes (Fitness for Human Habitation) Act 2018, landlords of both social and privately rented properties must make sure that their properties meet certain standards at the beginning and throughout a tenancy. If they fail to do this, tenants have the right to take legal action which includes fixed financial penalties of up to £30,000 and banning orders – possibly for life – for the most serious offenders.

SIFT wanted to assess how ready NCC and YHN were to ensure that all staff knew their responsibilities under the Act and how services had changed to cater for the Act's introduction.

2. Scope of the Review

SIFT set a clear scope for the scrutiny and considered the following:

- Information made available to staff about the Act
- Information made available to tenants about the Act
- Staff training on the Act
- To assess if services had changed as a consequence of the Act.

3. How we scrutinised this service area

During this scrutiny we completed a number of activities to gather evidence, these included:

- A briefing by two service leads
- Examining the Home Regulatory Standard
- Contents of the lettings pack
- Desktop review of relevant policies and procedures
- Assess the contents of the Act against the Decent Homes Standard
- Assess how the way tenants live in their homes for any impact on the landlord's ability to meet the requirements of the Act (what support is provided to tenants?)
- Interviews with frontline staff
- Mystery shop of solicitors
- Case Study
- Benchmarking other landlords' approach to compliance with the Act
- Assess the number of complaints to which the Act would be applicable.

4. Briefing by Lead Officers

Fiona Dodsworth, Partnership Officer with the Fairer Housing Unit prepared a briefing paper for SIFT on how the Council and YHN manage the physical aspects of the housing stock through a combination of medium and long-term investment and responsive repairs.

The Asset Management Strategy and Investment Plan were taken to Full Cabinet in October 2020 for political approval. It was presented in two documents. A public document for tenants and other stakeholders, setting out NCC's overall approach to asset management and a separate, confidential document, which is commercially sensitive.

The plan outlines the Council's medium and long-term approach to maintaining and improving the Council stock. It communicates NCC's priorities and will be used as a working document for YHN officers to carry out the day to day work of delivering the investment programme. It shows how NCC will maintain and invest in the housing stock over the period 2020-30 and details decision-making principles to maximise quality, sustainability and value.

One objective of the plan is to continue to meet the Decent Homes Standard and provide homes which meet NCC's legal duties such as gas servicing, fire safety and lift refurbishment. Lifecycle improvements will be carried out on a periodic basis in line with those set by the Decent Homes Standard.

NCC carries out a sustainability assessment to assess demand, popularity, stability and turnover. This information is held in a live asset management system called Apex and is regularly updated through stock condition surveys, capital investment completions, and works completed when a property is void.

A second briefing was carried out by Brendan Ryan YHN's technical surveyor who specialises in dealing with disrepair claims from start to finish, including the Court process and settlements.

Brendan stated that landlords have a responsibility to carry out improvements to homes where it can be shown that conditions would be hazardous to health or safety. This means that the 29 hazards included in the Housing Health and Safety Rating System (HHSRS) will need to be assessed, a risk category assigned (where applicable) and then any remedial action to address those risks are implemented to ensure the safety of the tenant and their visitors.

Brendan explained that the government has put a Protocol in place which landlords must follow when dealing with disrepair claims. This Protocol was previously the Pre-Action Protocol for Housing Disrepair Cases, but is now known as the Pre-Action Protocol for Housing Conditions Claims. These claims can have a personal injury element to them.

The aims of this Protocol are to:

- (a) Avoid unnecessary litigation;
- (b) Promote the speedy and appropriate carrying out of any remedial works which are the landlord's responsibility;
- (c) Ensure that tenants receive any compensation to which they are entitled as speedily as possible;
- (d) Promote good pre-litigation practice, including the early exchange of information;
- (e) Give guidance about the instruction of experts; and
- (f) Keep the costs of resolving disputes down.

There is an element of the Homes (Fitness for Human Habitation) Act which means that landlords have what is known as 'implied notice.' This occurs when they observe something needing attention to a property which could have a prejudicial impact on health or safety. Brendan used the example of a Housing Officer walking down the street and observing a broken gutter with water flowing out of it onto the outside wall of a house – the staff member would have a duty to report the repair. The same is true if they know something about, for example a 1970s estate which has structural flaws. Again this would indicate 'implied notice.'

Another element of the Act is known as 'implied responsibility', this is where a tenant happens to mention to a member of staff or a contractor that they want a repair carrying out. If at a future date the tenant makes a disrepair claim for the repair not being carried out (presumably because the staff member or contractor did not report it) the claim start date would be the date the conversation had taken place.

A disrepair claim can be brought by tenants, lessees (leaseholders) and members of a tenant's family. Normally tenants are represented in Court by a solicitor but they can represent themselves.

Brendan explained that some disrepair claims are generated by third party solicitors. Owing to a change in Legal Aid in 2010 firms of solicitors who used to specialise in personal injury claims swapped to pursuing disrepair claims. Many of these firms do not tell tenants that if they have rent arrears they could be eligible for Legal Aid.

'No win, no fee' firms of solicitors actively pursue tenants with outstanding repairs via social media and leafleting estates. They get the tenant to sign a contract which ties them into remaining with the firm until the case is settled. What they do not tell tenants is that if they decide to pull out of the case before it is settled they personally would be responsible for paying for the time the solicitors have spent on the case. Brendan stated that a barrister would charge anything up to £1,500 a day, so costs could be considerable if the case had dragged on for a long period of time.

The solicitors contract with an expert, who is usually a Chartered Surveyor to examine the tenant's property. They allegedly often tell the tenant not to let the landlord's representative into the property to carry out the repair because that will weaken their claim. The longer the claim goes on the more the solicitors can charge in fees, so it is not in their interests to complete a case quickly. On completion of a case the solicitors charge the tenant anything up to 50 percent of the damages they are paid. The payment to the tenant is often quite small compared to the solicitor's costs.

Brendan explained the way the cases are handled by the court. There are three tracks:

- Small claims track – officially claims for money up to £10,000 with up to £1,000 damages / compensation, and up to £1,000 repairs /works. Fixed costs are normally £260 plus disbursements (expert surveyors fee, Barristers fees, court fees)
- Fast track – claims over £10,000 up to £25,000 with damages over £1,000 repairs / works with over £1,000 plus standard costs, dependent upon work done by the tenant's legal team. Normally a maximum of one day at court
- Multi track – Claims over £25,000 normally more than one day at court for a very complex case.

The vast majority of claims against YHN fall in Small claims and Fast track.

In 2019/20 NCC and YHN had 37 claims for disrepair, of these 10 cases have been settled, with 27 cases outstanding. Expenditure for the 10 settled cases was £9,640.31 in damages and £15,560.00 in costs, with four case costs yet to be confirmed. The potential liability of the outstanding 28 cases for the financial year 2020/21 is estimated at £135,000 damages and £320,000 costs. To estimate the costs depends on the length of time the claim is for and the cost of any works. The amount of damages awarded relates to how long the disrepair has been for and how it has affected the tenant.

5. Work by YHN's Teams

YHN's Asset Management Team is responsible for the day-to-day delivery of the asset management programme and lead on any tenant consultation for major improvement works. They also manage the Apex database.

YHN's Operational Property Service is responsible for carrying out responsive, void, planned and cyclical repairs. Any upgrades which are required to ensure NCC comply with the Decent Homes Standard are completed when the property is void.

YHN's Housing Services Team has a role to play in preventing a property from falling into disrepair. Staff should report repairs which the tenant has raised with them directly and where they identify a repair in their day to day work.

6. Benchmarking

SIFT explored the websites and policy and strategy documents of 12 other social landlords to assess if they were informing tenants about the Act, the landlords included:

- North Tyneside Council
- Solihull Community Housing (Birmingham)
- Tower Hamlets Council (London)
- Northward Housing (Manchester)
- Adactus Housing (North West and Midlands)
- Your Housing Group (North West, Yorkshire and Midlands)
- S4B (Manchester)
- Guinness Partnership (operate in 155 Local authority areas across England)
- Gateshead Council
- South Tyneside Council
- Onward Housing (Liverpool)
- Nottingham City Council.

It is not clear from public facing websites, policy and strategy documents whether the providers have enacted any of the provisions of the Act, as there are very few references to it. The current COVID crisis might account for some delays, but it is difficult to substantiate this.

In some case (local authorities in London) references to the Act are made strictly in the context of regulating private landlords.

A significant number of providers do not post publicly any information about the housing standards by which they judge their stock.

Where information is available regarding minimum standards, it is not clear whether these were developed as a result of this Act or previous legislation, although the use of terminology, for example, Decent Homes seems to suggest older regulatory frameworks.

The areas highlighted as relevant and the details regarding what is considered acceptable differ from provider to provider (where such policies exist). Safe use of gas and electricity are a minimum, but other standards diverge. (Most detailed Onward Housing from Liverpool.)

In some cases standards appear only linked to age or disability criteria.

As the COVID crisis put pressure on local authorities, the entire benchmarking exercise was carried out on documents available on websites and no direct request for additional information was sent.

7. Mystery Shop

SIFT carried out a "mystery shop" and telephoned a number of solicitors around the Gosforth area of Newcastle. The results of the canvass were surprising.

- Of all of the solicitors contacted there were only two firms that did not know about the new law regarding the Homes (Fitness for Human Habitation) Act.
- The rest of the firms were aware of the Act but none would act on behalf of a tenant unless serious disrepair was demonstrated.
- All of the firms canvassed actively encouraged talking to the Landlord, and allowing them to make good the disrepair of the property.
- Legal Aid is no longer available for Civil Claims and that most law firms would operate on a "No Win – No Fee Agreement." Twenty-five percent of the compensation would cover the legal fees, unless the Landlord agreed to pay the costs.
- The SIFT member contacted their own home insurance legal cover line, in which an outsourced private company provide the service. Again they suggested that dialogue with the landlord would be the best approach. If there was serious disrepair then they would act on the tenant's behalf up to the limit of £50,000.

8. Satisfaction and Complaints

2019 Formal	April	May	June	July	August	September	October	November	December
Damp/Mould		1	2	4	5	3	4		1
Heating		1	1	2	2	3		1	2
Water		1	1		4	2	2	3	
Total		3	4	6	11	8	6	4	3

2020 Formal	January	February	March	April	May	June
Damp/Mould	5	5	12	2		1
Heating	1		8		1	
Water	4	5	8	1	2	4
Total	10	10	17	3	2	6

Sadly, there is too little information here for us to make a judgement or notice any trends or patterns.

9. Case Study

It was through a conversation with a member of SIFT, that a tenant first learned that the issue of damp and mould was covered by the Homes (Fitness for Human Habitation) Act. She mentioned to this member that it had spread quite extensively in the upstairs part of her house. The mould and damp had spread all over the walls and ceiling of the bathroom, the master bedroom and her children's rooms, and also onto the loft hatch door (see photographs overleaf).

The problem with mould and damp is an ongoing issue for the tenant's home that she had reported to YHN in August 2018, which they sought to remedy the problem by painting over it with a paint that has fungicide in it (the last time it was painted was just one year ago) but unfortunately, the mould has returned several times, due to the fact that the underlying problem of the mould and damp was not dealt with correctly at the time.

In August of this year she phoned the Contact Centre to ask for help with the ceiling cracking and peeling, she was informed by email that YHN does not carry out painting work inside a property and she should try painting it herself. When she explained that she has disabilities and is in receipt of Personal Independence Payment and cannot decorate she was told to contact her Housing Officer.

She then wrote a letter to YHN highlighting the fact that the damp and mould had returned, she included photographs outlining her concerns, particularly the impact that the spores off the mould could cause to the health of not only herself but also her two children, one of which is under five years old.

Following YHN's receipt of the letter staff acted swiftly on this, and, three managers were sent to investigate, not just the extent of the mould and the damp, but also the cause.

They told her that the underlying issues, which are causing the mould and damp is being caused by issues with the roof, and loft. The loft is not insulated enough, and is experiencing water penetration whenever it rains because there are loose tiles on the roof. Rainwater is then filtering through, down to the loft, and then also onto the walls and ceiling cavities of the upstairs rooms. They told the tenant that the extent of the mould, damp and outstanding repairs in her property is such that it may possibly involve both her and her children being decanted for a few weeks whilst the remedial work is being carried out.

The tenant has recently been told that she will be moved out of her home by the end of November and the repairs will take about two weeks before she can move back in.



10. Staff Interviews

A series of telephone calls and emails were sent in an attempt to organise staff interviews to find out what the general level of knowledge was in relation to the Homes Act by frontline staff. Initially the purpose of the interviews was misunderstood and four senior managers offered to participate – these members of staff would have a good knowledge of the Act and the event would not have met the key line of scrutiny SIFT wished to investigate. SIFT wanted to find out if staff knew what duty they had under the ‘implied notice’ and ‘implied responsibility’ elements of the Act.

By the time that staff understood what was required it was too late to organise the event if SIFT were to meet the presentation deadline.

11. Social Media Poll

YHN kindly used Chit Chat to ask tenants if they had heard of the Act. Thirty-three people said no, and 10 said yes, they had heard of it.

12. Conclusions

There does not seem to be a general understanding of how the Act will impact on frontline staff. This view is based on the fact that there was some misunderstanding about interviews for staff and a line manager recommending staff training on the issue.

No information about the Act has been circulated to staff or tenants. Two senior members of staff stated that services had not changed at all as a result of the implementation of the Act; however they had changed because of COVID.

YHN’s and NCC’s websites have no mention of the Act at all; this is not unlike several of the benchmarked organisations, when they do mention the Act it is in relation to private landlords.

YHN and NCC have not made customers/tenants aware of the Act or its potential impact on finances should there be a large take up of the use of disrepair claims by tenants. SIFT were keen to know if a contingency fund had been set up to pay for damages and legal fees.

YHN have not disseminated any information about solicitors putting pressure on tenants, or the consequences of tenants deciding to stop proceedings before cases are complete, which would mean that the tenant had to then cover the cost of the solicitor’s time which had all ready been spent on the case.

This scrutiny has been carried out during two lockdown periods owing to the COVID pandemic and therefore should be repeated after some time has passed when more case law would be available and services has resumed under relatively normal conditions.



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Scrutiny Involvement For Tenants

Recommendation	Management Response	Proposed Actions	Timescale	Responsibility
1. A frontline staff briefing note about the Act should be circulated as soon as possible	K. Briggs is due to attend a manager's meeting in January 21 to brief managers on the Act so in turn they can cascade this information to the teams.	K. Briggs to attend Housing Management meeting to disseminate information	January 2021	K. Briggs
2. An article should be published in Homes and People about the Act. Customers should be made aware that before they approach solicitors they should first give YHN an opportunity to carry out the remedial work.	YHN will put ½ page on the Act and importance of reporting repairs in the March Edition of Homes and People. YHN recognises the importance of making sure that tenants do not fall into the trap of using third party solicitors who will use the Homes (Fitness for Human Habitation) Act as a basis for the claim.	Collate information and run an article in Homes and People publication.	April/May 2021	Jill Hayton
3. When the Tenant Information Pack is next updated information about the Act should be included.	The tenancy sign up pack is to be reduced to focus on key items such as building safety. This is in response to customer feedback. All tenants are issued with a copy of their Tenancy Agreement at sign up which outlines our responsibilities as their landlord and their responsibilities as tenants.	SIFT may want to review the pack for a future scrutiny	TBC	TBC



Scrutiny Involvement For Tenants

Recommendation	Management Response	Proposed Actions	Timescale	Responsibility
<p>4. NCC's and YHN's websites should be updated to include information about the Act.</p>	<p>We will include much improved information about how to report a repair on the new website but not about the Act. The repairs service is also informed by other legislation which is not communicated to tenants. They feel the central message about reporting repairs is most important than communicating specific legislation. We've held multiple customer insight sessions in building the new website and promoting legislation didn't come up as a key theme in any of the feedback received.</p>	<p>YHN communications team to build the new website however both NCC and YHN have to comply with the Accessibility Regulations for websites. This restricts our ability to add PDF's etc, as well as being mindful about page length.</p>	<p>The exact date is TBC but the current projected date is June 2021</p>	<p>Communications Team</p>
<p>5. YHN should set in place a feasible, long term information and training plan for staff.</p>	<p>YHN want to roll out training so that staff are aware of their role in compliance. YHN feel that this will be a more effective way of ensuring tenants get the right service.</p>	<p>HHSRS training & awareness of the Homes Act training to be rolled out to Technical staff, Repairs & Construction Services managers, and the operations team. YHN to procure and facilitate the required training.</p>	<p>June 2021-Ongoing</p>	<p>K. Briggs</p>