

ARCH and NFA submission to Decent Homes Review Criterion (a) statutory minimum standard for housing and use of the HHSRS

Introduction

The National Federation of ALMOs (NFA) and the Association of Retained Council Housing (ARCH) are core participants of the Decent Homes Review Sounding Board. This joint submission supplements our comments at the Sounding Board meeting on the 8th February, drawing on a meeting of representatives from our member organisations held on 24 February.

Statutory Minimum Standard for housing

We believe the Decent Homes Standard should include a statutory minimum standard for housing, but it is important to consider what purpose the minimum standard is intended to serve before deciding how it should be defined. Legislation already specifies other minimum requirements that are relevant in other contexts, in particular the definitions of a statutory nuisance in section 82 of the Environmental Protection Act, disrepair in the Landlord and Tenant Act, and the definition of fitness in the Homes (Fitness for Human Habitation) Act 2018. These are all provisions intended to trigger an opportunity for redress for the occupant where a home fails to meet the defined standard. The first question the Review needs to address is whether that is the purpose of the statutory minimum in the Decent Homes Standard, or whether this part of the Standard serves some other purpose, such as directing future investment to the areas of highest risk.

A common complaint by our tenants is that the Decent Homes Standard is difficult to understand. The role of the statutory minimum is one area where clarity could be improved. If this part of the Standard is intended to give tenants a clear definition of the minimum standard they can expect every home to meet, with the corollary that they can seek action from their landlord where it does not, then that should be clearly spelt out, and the Review needs to consider how the definition chosen fits with the other legal definitions mentioned above to minimise the risk of further complicating an already complex area of law, creating new opportunities for the claim farmers who operate in this field. If that is not the purpose of criterion (a), this also needs to be spelt out in terms that are easy for tenants to understand.

The HHSRS was not designed primarily to provide a definition of the statutory minimum standard, but as a methodology for assessing risk. Whether it

Association of Retained Council Housing
4 Riley Court, Millburn Hill Road
University of Warwick Science Park, CV4 7HP
Tel: 024 7647 2711

info@arch-housing.org.uk
www.arch-housing.org.uk
@ARCH_housing
Company Reg.No: 07970258

National Federation of ALMOs
4 Riley Court, Millburn Hill Road
University of Warwick Science Park, CV4 7HP
Tel: 024 7647 2729

info@almos.org.uk
www.almos.org.uk
@NFA_ALMOs
Company Reg. No: 6781539

remains adequate for the latter purpose we discuss below. But we believe it is worth reconsidering the decision in 2006 to repurpose the HHSRS definition of a category 1 hazard to serve as the definition of the statutory minimum in the Decent Homes Standard. Some of our members would prefer a definition based on the fitness standard as defined in the 2018 Act, but all are concerned to improve clarity in this area and, to reduce opportunities for lawyers to trade on the complexity of legislation in this area.

Disrepair claims

Members across the country but particularly in the north have reported a significant increase in disrepair claims initiated by companies promising to make tenants money using the HHSRS. This appears to have increased since the ban on PPI insurance claims and the feeling is new, disreputable companies are seeing this as the next big way to make some money and members report vulnerable and poor households being duped into signing things they do not understand and have not even reported to their landlord in the first place.

It would be good as part of this work to see better regulation on claim farmers in terms of them both evidencing claims and providing clear and compliant assessment evidence to support any claim submitted to the landlord, not just a random list of generic work items. The hope is that, by tightening this up, there will be less claims, however the claims that we do receive will be measured against clear, measurable criterion, and our surveyors will be in a far stronger position to assess the claims and challenge them against this framework.

Review of the HHSRS

We note that MHCLG have commissioned an in-depth review of the HHSRS, in which our members have been invited to participate. It would make sense to wait for the outcome of this review to be reported back to the Decent Homes Sounding Board for comments and discussion before any final decision is taken on this criterion.

Comments on HHSRS Methodology

Some early reactions from our members to the invitation to comment on the HHSRS include:

The use of the HHSRS as part of sample surveys, typically of 20% of stock annually as part of a 5-year rolling programme to help determine levels of non-decency and inform further planned maintenance and capital investment programmes is problematic. One member commented that “Typically, the points within the HHSRS are included as questions in the stock condition surveys undertaken. This information is then uploaded onto the stock database with Cat 1’s triggering a non-decency tag for investigation.

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Therefore, if any Cat 1 issues were highlighted, then these would be dealt with straightaway. If processes work, then a surveyor should already have instigated any works from site anyway. Similarly, these are usually brought to our attention by residents, e.g., excess cold, fall hazards etc., and are then picked up by via our Repairs section.”

It is also unclear how good a reflection of the likelihood of these hazards being prevalent across any given stock type really is for example whilst damp and mould are probably likely to be present in similar types of homes due to the age or construction type other hazards like broken bannisters or some trip hazards may be more about individual household behaviour in either not reporting repairs or damaging property.

All our members agreed the 29 criteria listed in the HHSRS was too long and the way of judging it too complicated and so interpreted quite differently by surveyors across the country. It is also not easy to explain to tenants.

We understand the HHSRS may still be very useful for tenants experiencing disrepair in the private rented sector and in maintaining an agreed minimum standard across the whole rented sector. However, it might be better to look at a separate but related set of minimum criteria for use in DHS surveys and assessments. Some members thought the Homes (Fitness for Human Habitation) Act 2018 maybe a better fit. At the very least work should be done to tie all these different standards together into an easy-to-understand set of standards for tenants and some communication organised with landlords to better communicate those and to remind tenants of both the landlord’s responsibility to provide a reasonable standard of repair and their responsibility to report repairs in particular where a failure to do so could be dangerous for them and their families.

Another member commented that “The most important thing with HHSRS is a clear, simplified framework which assesses H&S standards within our homes, which are effectively supported by digital systems which standardise inspection outcomes and ultimately apply greater consistency to overall outcomes.”

Members have also said that it would be very useful, as part of any revision of the HHSRS, if a number of worked examples could be presented, each focusing on the set list updated of hazards, which caters for both professional surveying staff, and customers. Members also recommended a refresh of the assessor training, which is presently over a two-day course, with assessment coursework. Some members have suggested that annual refresher courses should be required to keep everyone up to date and consistent.

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