



Championing better homes and communities

Awaab's Law Consultation
NFA response
4 March 2024

Introduction

The NFA (National Federation of ALMOs) is the trade body which represents arms-length management organisations across England. All are not-for-profit bodies wholly owned by their parent councils, created to manage council-owned housing and deliver housing-related services.

The NFA represents 19 ALMOs across the country managing around 223,500 local authority-owned properties. They also build and acquire new stock. They deliver housing services for tenants and their wider communities.

Our response is shaped following feedback from ALMO Asset Management teams across the country.

For more information on our submission, please email Lisa Birchall, NFA Head of Policy (lisa.birchall@almos.org.uk)

Summary

Our members support the principles of Awaab's Law. Everyone should live in a home that is decent, safe and secure, and social landlords should investigate and remediate health hazards in a timely manner. This is a core requirement of a good social landlord, but it has not always happened, and this law should raise standards across the social housing sector.

While our members support the principles of Awaab's Law, they have concerns about some of the detail included in the consultation and the operability and unintended consequences of some of the proposals. If proposals are not achievable, then good and responsible landlords will be set up to fail, driving disreputable claims harvesting companies and not delivering the improvements that tenants deserve.

In particular:

- Our members disagree that Awaab's Law should be extended to all 29 HHSRS hazards. It should remain focused on damp and mould.
- Our members do not feel that *all* the proposed timeframes are achievable, and timeframes should be calculated in working days not calendar days to match the existing legislative framework in the sector.

- Our members consider that the impact assessment considerably underestimates the cost of implementing Awaab's Law.

Wider context

We are very concerned that there is no additional funding provided to support local authorities and ALMOs with the introduction of Awaab's Law. The combined impact of rising prices, new regulation and four years of enforced rent cuts that ended in 2020, plus the rent cap in 2023/24, have stretched Housing Revenue Accounts to the limit.

Over the next few years, new consumer regulation, building safety and fire safety requirements, fees to the Regulator and Housing Ombudsman, and an upcoming revised Decent Homes Standard without additional funding, will all put Housing Revenue Accounts under untenable pressure. Rather than individually assess the impact of different proposals, Government needs to assess their impact in the round, and ensure that Housing Revenue Accounts are effectively funded on a long-term basis to introduce these changes.

Impact Assessment

DLUHC's Impact Assessment of implementing the proposed changes is likely to be a considerable under-estimate. The conclusion that 'the costs associated with the investigation and repair timescales are likely to be minimal, as the additional burden is the speed at which repairs need to be responded to, not the repairs themselves' significantly underplays the fact that the speed with which repairs are responded is a large part of the costs; doing repairs faster and in a less planned way will cost more. Requirements around assessing individual risk, the provision of a written summary, extension to all HHSRS hazards, moving to calendar days rather than working days, will all have an impact on the costs of repairs services (please see our response to the question on the impact assessment below). We strongly request that DLUHC reviews their methodology for calculating costs and works with the sector to provide a more realistic estimate of what this will cost, along with new burdens funding for local authorities.

Coordinating new requirements

Government is currently introducing multiple changes over the next few years that will impact on asset management services and delivery. These include Awaab's Law, a proposed new Decent Homes Standard, and new Consumer Standards, including the new Competence and Conduct Standard with the requirement for professional qualifications. We are asking Government to ensure that these changes are coordinated and introduced in a sensible manner so that landlords can review their asset management models and delivery and respond to them in the round.

This includes working with the sector to set a realistic and achievable timescale for implementation of Awaab's Law.

Government has also directed the Regulator to introduce a new requirement for landlords to provide accessible information to tenants about their rights and the regulatory requirements that RPs must meet in connection with their homes, facilities and landlord services. We strongly request that Government and the Regulator consider the implementation of this requirement so that landlords

can respond in a logical, cost-effective way rather than repeatedly having to provide tenants with updated information as new requirements come into force.

Claims Harvesting Companies

We have significant concerns about the impact of introducing these proposals on the industry of claims harvesters that are currently targeting tenants in many parts of the country. While our members fully support the right of tenants to take their landlord to court where there are issues of disrepair, there are claims harvesting companies that are not acting in the best interests of tenants and often leaving them significantly out of pocket, intimidating them, as well as preventing necessary remediation work being undertaken on homes. We are requesting that Government introduce changes to limit the profitability of claims harvesting and the negative consequences claims harvesters are having on tenants, before Awaab's Law comes into effect.

NFA Response to Consultation Questions

Scope of Awaab's Law - Hazards

1. Do you agree that Awaab's Law should apply to all HHSRS hazards, not just damp and mould?

No.

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 and safety of the resident?

No

3. If you have answered 'no' to any of the questions in this section, please provide an explanation.

Our members disagree that Awaab's Law should apply to all HHSRS hazards. It should remain focused on damp and mould.

Widening the scope to all HHSRS hazards risks diluting the original purpose of the legislation, make it unworkable, and is likely to have the consequence of making it very difficult for landlords to prioritise hazards that pose a significant **and imminent** risk to members of the household.

Awaab's Law should focus on damp and mould, because other elements of disrepair are already governed by existing legislation, including:

- Landlord and Tenant Act 1985, i.e. Section 11
- The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994
- Housing Act 2004, (Housing Health and Safety Rating System)
- Decent Homes Standard
- Environmental Protection Act 1990
- Defective Premises Act 1972
- Home Standard (RSH Consumer Standards)

- Homes (Fitness for Human Habitation) Act 2018
- The Children Act 2004, Section 11

There are a number of HHSRS hazards that are unlikely to cause significant and imminent risk to the occupants, and they are satisfactorily regulated through other legislation. This includes, for example, lighting, crowding and space, noise, and position and operability of amenities etc.

Members already assess health-related hazards, and those hazards that pose the most risk (electrical, explosions, fire etc.) are dealt with as emergency works to remove the hazard. Risks which are of a slower-effect nature (e.g. lighting and noise) are usually investigated over a longer non-emergency timeframe. As phrased, Awaab's Law seems to be placing the same emphasis on dealing with all hazards in the same way which will have significant impacts on budgets and resources, and is unsustainable.

The inclusion of 'crowding and space' also causes significant concern. While overcrowding can cause disrepair issues, it should not, in itself, be in scope for Awaab's Law. Considering the incredible pressures on social housing stock, particularly larger homes, and the fact that in many areas of the country there are just not the homes to move households to, the inclusion of 'crowding and space' combined with the expectation to decant households, will be unachievable for most social landlords and will drive unrealistic expectations for tenants and fuel disreputable claims harvesting companies.

Members have told us that the examples provided in Annex B are unhelpful and create confusion. The inclusion of potential faults or omissions of property elements that are not required under the Decent Homes Standard (e.g. trickle vents, TRVs, wet heating systems) will cause confusion around minimum property standards for tenants.

The assessment of risk should be based on the skill and competency of the surveyor, the individual circumstances within each property, and taking due consideration of any occupant's vulnerabilities. The significant risk threshold is subjective, and providers will require further guidance to support them so there is less chance for inconsistency while case law is developing. A revised risk assessment guidance should be developed with the sector as an Approved Code of Practice alongside Awaab's Law, since the HHSRS assessment will not be suitable.

Proposal 1: Initial investigations of potential hazards

1. Do you agree with the proposal that social landlords should have 14 calendar days to investigate hazards?

No

2. Do you agree that medical evidence should not be required for an investigation?

Yes, with caveats

3. If you have answered 'no' to any of the questions in this section, please provide an explanation.

Firstly, members disagree with the use of calendar days rather than working days. Existing legislation – for example *The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994* – uses working days and this is a long-established principle of the way that repairs are arranged and undertaken in the social housing sector, with out-of-hours only done as emergency repairs.

Introducing another law that covers much of the same ground but uses different timescales is going to cause confusion and ambiguity for tenants and landlords.

Moving to calendar days instead of working days will require restructuring of the way that repairs services, staff and contractors currently operate and will significantly increase costs. This restructuring, and renegotiation of contracts, will put further pressure on repairs services and Housing Revenue Accounts (please see our response to the impact assessment questions).

Secondly, if DLUHC sets a target number of days to investigate hazards, the calculation should commence on the next working day after the landlord has become aware of the hazard (i.e. the day they become aware of the issue is Day 0). This is in line with the approach taken, for example, by the Housing Ombudsman in their Complaints Handling Code, and means that if the landlord becomes aware towards the end of a working day, then they still have the full time period to investigate.

Our members had different views on the timescale for 14 calendar days for investigating hazards. In some geographical areas, members fed back that the challenges in the construction industry around securing services and materials in their locations would make this timescale difficult to achieve. The challenges with 'no access' were also raised, and the limited and time-consuming processes currently available to social housing providers to be able to get into properties with no access. In other areas, 10 working days was felt to be a reasonable timescale.

The requirement to assess the risk to the health and safety of the actual resident living in the dwelling to determine whether Awaab's Law applies will require surveyors to have specialist training and competencies, including assessing vulnerability. It is very unlikely that a single surveyor could have the competency to assess all 29 hazards and risk assess against the individual needs of occupants. While some vulnerabilities will be obvious, others will be less so, and assessing vulnerability against specific hazards will require specialist knowledge. Therefore, if Government continues with its proposal to extend to all 29 HHSRS hazards (which we do not think it should), in some cases it will clearly take longer than the proposed 14 days (or 10 working days) to determine whether there is a hazard, and if so, the level of risk to a resident's health and safety.

Members broadly agreed that it is not practicable for medical evidence to be required routinely for an investigation, particularly as their staff are not medical experts and should not be expected to use that evidence to make a decision. However, there are still concerns about this, and the duties it will place on landlords and call centre teams to make urgent decisions and consider self-reported medical claims. There should be a provision in the Law for landlords to be able to request medical evidence in certain cases to help make the decision, for example to support with any complex vulnerabilities, where there is disagreement between the landlord and the tenant, and where the tenant is seeking permanent rehousing.

Proposal 2: Written summaries of investigation findings

- 7. Do you agree with the proposal for registered providers to provide a written summary to residents of the investigation findings?**

Yes

- 8. Do you agree with the minimum requirements for information to be contained in the written report?**

We do not think there is sufficient detail provided in the consultation about the requirements to comment on this.

9. Do you agree registered providers should have 48 hours to issue the written summary?

No

10. If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible).

Our members have expressed concerns about the 48 hours timescale to issue a written summary. Broadly speaking, opinion is that it will be very difficult for landlords to achieve, set unrealistic expectations for tenants, and drive disreputable claims harvesting:

- As above, the timescale should be in working days not 'calendar' hours, so it is consistent with The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994 and the way that the industry is currently set up.
- 48 'calendar' hours is not sufficient time to provide the level of information being required, particularly in relation to the remedy and the timescale for completion.
- Working in 'calendar' hours will also be very challenging when you take into consideration weekends and non-working days when other professionals are not available to support in developing the summary (for example, where follow-up investigations are required or specialist contractors and surveyors need to provide information to feed into the written summary).
- Point 78 states that RPs should take into consideration any accessibility and/or language needs of the resident to ensure that the summary of findings can be understood. While our members fully agree that summaries should be accessible, it will be very difficult – if not impossible – to complete the summary and make it accessible/translate it etc. within 48 hours, even more so if these are 'calendar' hours.
- Our members are currently struggling with disreputable claims harvesting companies which target tenants – some of whom are vulnerable – and manipulate them into starting legal action which often leaves the tenant out of pocket. Setting a timescale for social landlords which they then cannot meet will fuel the claims harvesting and court cases.

Due to the level of information required, 5 working days would be a more achievable and reasonable timescale (with the inspection/assessment day being day 0, and sending in an electronic format). Where the resident requests a hard copy format or where the information is required in an alternative format, 10 working days would be reasonable (with the inspection/ assessment day being day 0). This is in line with the Housing Ombudsman's Complaint Handling Code, for example.

Where the Registered Provider has attended as an Emergency (Proposal 5) and the hazard has been abated, then a written summary of investigation findings should not be a requirement.

We have questioned the achievability of the 48 hours timescale, but it is also worth noting that if Government goes ahead with this, it will also cause significant cost pressures for the sector because of the requirement to have the resources lined up to work out-of-hours and at a considerable pace. We have outlined these in our response to the impact assessment.

Proposal 3: Beginning repair works

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?

No

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?

Yes

13. Do you agree with the proposed interpretation of “begin” repair works?

No

14. If you have answered ‘no’ to any of the questions in this section, please provide an explanation.

Firstly, as outlined above, the timescales of Awaab’s Law should be calculated in working days.

7 calendar days would be possible in some cases, but there are many cases where it would not be a reasonable timeframe to safely ‘begin’ works to repair the hazard. For example, in cases where further intrusive surveys are required to accurately diagnose the root cause of the defect; cases where environmental monitoring over a period of time is required; Asbestos sampling, to ensure compliance with The Control of Asbestos Regulations 2012; where specialist remediation (e.g. pest control) was required; or where contractor and material availability is a challenge.

The 7 day timeframe should also be put in the context of the considerable pressures that social housing repairs services and contractors are under, with high inflationary costs and shortages of repairs operatives combining with an aging stock and cuts from Housing Revenue Accounts to leave many services struggling. Mandating a 7 day timeframe (using calendar days) without providing additional funding or resources will set the sector up to fail.

Awaab’s Law already provides for ‘emergency works’ which will ensure that significant and imminent risks to the resident are abated, therefore a more reasonable and achievable timeframe for beginning repair works should be established.

Proposal 4: Completing repair works

15. Do you agree that the registered provider must satisfactorily complete repairs works within a reasonable time period, and that the resident should be informed of this time period and their needs considered?

Yes

16. If you have answered ‘no’ to the question in this section, please provide an explanation and/or an alternative suggestion.

This should be based on existing case law and precedence under the Landlord and Tenant Act 1985, i.e. Section 11.

Proposal 5: Timescales for emergency repairs

17. Do you agree that timescales for emergency repairs should be set out in legislation?

We do not have a comment on this.

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?

Yes

19. If you have answered 'no' to any of the questions, please provide an explanation

The response time and proposed scope of 'emergency' repairs is likely to coincide with existing service standards for many landlords. However, it is worth noting that The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994 sets out common 'emergencies' with a requirement to act within up to three days. Having two sets of timeframes is likely to create loopholes for claims harvesters to take advantage of, as well as confusion for tenants.

Proposal 6: Decanting if the property cannot be made safe immediately

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?

Yes, with caveats.

21. If you have answered 'no' to the question in this section, please provide an explanation.

While we agree in principle, landlords should have to arrange for residents to stay in temporary accommodation (at the landlord's expense) if – in the opinion of the competent surveyor – the property is deemed unfit under the Homes (Fitness for Human Habitation) Act 2018, unless the problem is caused by tenant behaviour and/or the problem is caused by the tenants' own possessions.

Our members already take a risk-based approach where decants are needed, and work with residents on an individual basis to find solutions.

Across the country, there is no 'vacant social housing stock' to move households to. The only options are likely to be bed and breakfast accommodation, and often outside the area. Awaab's Law needs to reflect this reality in its definitions, so that landlords can realistically meet its requirements.

Proposal 7: Record-keeping

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?

Yes

23. If you have answered 'no' to the questions in this section, please provide an explanation.

Defence for landlords should include (without being limited to):

- Where a resident requests an appointment to 'begin/attend' works outside of the maximum time period or prevents access
- Defence in line with the Homes (Fitness for Human Habitation) Act 2018. So, for example, the landlord will not be required to remedy unfitness when:
 - The problem is caused by tenant behaviour;
 - The problem is caused by the tenants' own possessions.

Impact Assessment

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.

No

25. If not, please can you provide additional information?

Our members do not agree that the impact assessment adequately captures the increased additional costs to the sector. Having reviewed the proposals, our members have identified a number of areas of cost that are not captured by the impact assessment. We consider that the Government should undertake a more realistic cost appraisal with the sector before implementing Awaab's Law.

Issues include:

Implementation

- Notable costs will be incurred to develop and manage the new systems and monitoring/reporting processes that will underpin the new requirements.
- Existing supplier contracts will need to be re-negotiated or re-procured. Moving suppliers to a reactive more emergency-based model will increase costs, and contractors will need to create specialised teams in order to meet the time stipulation requirements.
- The two hours per person for 'familiarisation costs' is likely to be an under-estimate considering the level of training required to meet the new requirements.
- Unless Government removes the profitability of claims harvesting, there is a large risk that Awaab's Law fuels claims harvesting companies which will take significant sums of money from tenants and landlords' Housing Revenue Accounts.

Assessing the Risk

- New requirements to assess the risk to the actual occupants of the household will lengthen property surveys/inspection visits. This will include requiring a formal risk assessment, assessing vulnerability and potentially undertaking Equality Impact Assessments.
 - As an example, one of our members calculates that there will be an increase in activity by 1 hour at an average officer cost of £29 per/hour per report. Based on the current potential visits under the scope of Awaab's Law, this will increase their annual revenue liability by approximately £160,000.

- The lengthening of visits will increase the numbers of technical inspectors trained on HHSRS that an organisation requires.
- There will be additional training required for staff to undertake property surveys/inspection visits in line with the new requirements.
- There is currently a shortage of surveyors with the technical skills required, leading to an increasing sector-wide skills gap which is likely to drive an increase in salaries as providers compete for staff.

Beginning works within 7 days

- The shorter lead in times will increase costs (much of the cost of repairs is in the speed with which you do something; doing it faster will cost more).
- This will significantly reduce a provider's ability to programme work in, and will move providers to a reactive manner of delivery which is more expensive. For current planned works, organisations have the time to create Guaranteed Maximum Price orders, but with the timeframes proposed, in effect jobs will be putting reactive emergency orders with unknown costs, and therefore landlords will have very little cost management control.
 - For example, one of our members has calculated this is likely to increase repair costs by at least 20%.
- Moving from working days to calendar days will increase costs as landlords and contractors will need to cover non-working days.

26. Do you agree with the assessment of the net additional costs of proposal 2?

No

27. If not, can you provide additional information?

Our members also consider the assessment of the net additional costs of proposal 2 have also been underestimated. For example:

- The assumption that 15 minutes will be sufficient for the administration associated with the report process is very unrealistic, especially as reports will be tailored to the resident's needs.
- The assumption that this could be carried out by an automated system in the future is also unlikely to be realised, and automation will have costs.
- Turning a report around in 48 'calendar' hours will significantly increase costs because tighter timescales will be more expensive, may require out-of-hours work and increased staffing capacity (for example, if the 48 hours starts on a Friday).

28. Do you agree with the assumptions we have made to reach these estimates?

No

29 If not, please can you provide additional information

As outlined above, we do not agree with the assumptions that have been made to reach these estimates. We request that DLUHC undertakes more detailed work with the sector to develop a more realistic impact assessment before Awaab's Law is introduced.