



The Housing Health and Safety Rating System

By Dr David Smith
Of PainSmith Solicitors



Housing Health & Safety Rating System

- HHSRS for short!
- Meant to improve quality of housing stock
- Introduced by Part I of the Housing Act 2004
- Replaces previous system of repairing notices under Housing Act 1985
- Substantial change in thinking

The Housing Health and Safety Rating System (or HHSRS for short) was introduced by Part I of the Housing Act 2004. It was commenced by SI2006/1060 on 6 April 2006 along with other provisions of the Housing Act 2004 relating to licensing of HMOs and other rental properties. It was further defined by SI 2005/3208 which set out the method by which the system should operate and has been further codified by Operating and Enforcement Guidances published by the then Office of the Deputy Prime Minister (now the Department of Communities and Local Government). The Guidances can be found on the DCLG website at www.communities.gov.uk.

The HHSRS is designed to entirely replace the previous system of repairing notices under the Housing Act 1985 and in its setting aside of the previous system represents a massive alteration in thinking on the part of Environmental Health Officers. Previously Environmental Health Officers assessed properties largely by looking for items that were defective, in disrepair, or not present and then demanding that these things were fixed or fitted. This system, while effective, was limited in scope and was also highly prescriptive. It could not take account of small but nonetheless relevant problems and could often have the appearance of being a 'sledgehammer to crack a nut'. The HHSRS aims for a more proportionate system focused on the impact of problems on the lives of the occupiers of property.



What is it?

- Evidence based
- Uses statistical methods based on analysis of housing health data
- Identifies individual hazards
- Score based on likelihood of occurrence X scale of harm
- Theoretically objective and property neutral

“The HHSRS is evidence-based. It is supported by extensive reviews of the literature and by detailed analyses of statistical data on the impact of housing conditions on health. This evidence is summarised in the Hazard Profiles section of this Guidance and these are intended to inform professional judgement.” – *HHSRS Operating Guidance, para. 1.04*

The HHSRS is based on evidence derived from a large number of studies relating housing to health as well as on detailed analysis of accident statistics. It aims to use statistical data to give an objective and repeatable result, but one which is proportionate and takes account of the individual property being assessed.

Individual hazards are identified and then a hazard score is generated for each hazard based on the likelihood of an occurrence resulting from that hazard and the level of harm that could result from that occurrence. Ultimately this should mean that each hazard is judged on its individual merits rather than applying a catch-all approach.

Similar Hazards, with Differing Outcomes Example –

There is a window with a low internal sill (about 250mm above the floor) and with a loose, easy to open catch to the large side hung opening light. A small child could

climb onto the sill and open the window relatively easily, and, once there could fall out through the open window. The likelihood of this occurring over the next twelve months is judged to be around 1 in 180. If that window is in the bedroom of a flat on the ground floor, with grass immediately below, the outcome would be relatively minor – 99% Class IV (bruising) and perhaps 1% Class III (a strain or sprain). This would give a Hazard Score of 7 (Band J). However, if that same window is in the bedroom of a flat on the 2nd floor, with a paved area immediately below, the outcome would be major – 10% Class I (paralysis or even death), 80% Class II (serious fractures) and 10% Class III (a strain or sprain). In this case, with the same likelihood of 1 in 180, the Hazard Score would be 1,016 (Band C).

Although in both cases the likelihood is the same, the Hazard Score reflects the dramatically different outcome

HHSRS Operating Guidance, para. 3.03



Aims of HHSRS

- “Any residential premises should provide a safe and healthy environment for any potential occupier or visitor”- *HHSRS operating guidance*
- Dwelling should provide adequate protection from all potential local hazards
- Balance required between avoidable and unavoidable hazards. Risk-benefit analysis

The aim of the HHSRS is to make sure that all premises provide a safe and healthy environment and that they provide adequate protection against local environmental hazards. There is always a need to trade off the risks of any feature of the premises with the benefits provided by that (risk of electrocution against the value of having electricity for example) and this is recognised by the Operating Guidance.



Outcomes and Enforcement

- Inspection and enforcement by Local Authority
- Reduces all hazards to one of two categories
 - Category 1 – Local Authority **must** act
 - Category 2 – Local Authority may act
- Each hazard categorised individually- no overall score

All inspection and enforcement is carried out by the relevant Local Authority through their Environmental Health Department. All hazards are placed into one of two categories. Local Authorities must take action to remedy Category 1 hazards. They can choose to take action on category 2 hazards although the more of these a property has the more likely such action will become. All hazards are examined individually, no overall hazard score will be produced for the premises.



Inspection Régime

- Only applies to private residential property
- Any rental property can be inspected
- Licensed premises must be inspected within 5 years of application
- Otherwise inspection on complaint

The HHSRS only applies to property in the private rented sector, it does not apply to Local Authority stock. Any rental property can be inspected, including empty property. Where an application has been made for a premises license in accordance with parts II or III of the Housing Act 2004 such an inspection must be made within 5 years of the application although the grant of a license should not be delayed pending such an inspection. The Authority is also obliged to inspect where a formal complaint is made.



Scores and Categories

- Score calculated by multiplying likelihood of harm with severity of harm caused
- Score from 0 to 1,000,000
- Transformed to category
 - score (0 to 1,000,000)
 - band (A to J)
 - category of hazard (1 or 2)

The hazard score is calculated by multiplying the probability of an event within the next 12 months by the scale of harm that will be caused by that event happening. This produces a score ranging from 0 to 1 million. This score is transformed into a hazard band from A to J according to the table below:

Band	Hazard Score Range
A	5,000 or more
B	2,000 to 4,999
C	1,000 to 1,999
D	500 to 999
E	200 to 499
F	100 to 199
G	50 to 99
H	20 to 49
I	10 to 19
J	9 or less

Once the hazard band has been found this is changed into a hazard category. Hazards in band C or higher are category 1 hazards, hazards below band C are category 2 hazards.



Classes of Harm

- I. Extreme (x10,000)
 - death, lung cancer, 80% burns, mesothelioma...
- II. Severe (x1,000)
 - loss of hand, serious burn or fracture, mild stroke...
- III. Serious (x300)
 - Hypertension, loss of sleep, diarrhoea, loss of finger, regular and severe migraine...
- IV. Moderate (x10)
 - Pleural plaques, broken finger, regular serious colds...

There are four classes of harm, ranging from extreme to moderate. Extreme harms are those which will cause death or severe and permanent disablement. Severe harms would cause significant disablement for a substantial time period or long-term disfigurement. Serious harms are those which would cause moderate disablement or serious or long-term inconvenience. Moderate harms would cause minor disablement or recurring illness. It should be noted that many harms that fall into the lowest two categories are issues that would not normally be seen as issues and under previous schemes would not have even been registered by Environmental Health Officers. Many of these issues are the sort of thing that would previously have come under the heading of 'sick building syndrome'.



Bands and Categories

- Bands A-C are Category 1 Hazard
 - i.e. a score of 1,000 or more
- Band C: chance in 12 months of:
 - 1 in 1,000 chance of class I harm
 - 1 in 100 chance of class II harm
 - 1 in 30 chance of class III harm
 - certainty of class IV harm

As previously stated hazards in bands A to C inclusive are Category 1 hazard on which the Local Authority is obliged to act. Hazards from lower bands fall into Category 2 and the Local Authority has the choice of whether they will act or not. In actuality a band C harm is quite severe, representing a 1 in 1,000 chance of an event leading to a Class I harm (ie. Death) occurring within the next 12 months. This is a significant and severe risk of injury.



Types of Hazard

- 29 Hazard Profiles
- Arranged in Four Main Groups
 - Physiological Requirements
 - Psychological Requirements
 - Protection Against Infection
 - Protection Against Accidents
- Some profiles are a bit unusual
 - Excess heat
 - Volatile Organic Compounds

There are 29 different types of listed hazard in the guidelines, these are called hazard profiles. The 29 profiles are collated into 4 groups. The 29 hazard profiles are as follows:

A PHYSIOLOGICAL REQUIREMENTS

Hygrothermal Conditions

- 1 Damp and mould growth
- 2 Excess cold
- 3 Excess heat

Pollutants (non-microbial)

- 4 Asbestos (and MMF)
- 5 Biocides
- 6 Carbon Monoxide and fuel combustion products
- 7 Lead
- 8 Radiation
- 9 Uncombusted fuel gas
- 10 Volatile Organic Compounds

B PSYCHOLOGICAL REQUIREMENTS

Space, Security, Light and Noise

- 11 Crowding and space
- 12 Entry by intruders
- 13 Lighting
- 14 Noise

C PROTECTION AGAINST INFECTION

Hygiene, Sanitation and Water Supply

- 15 Domestic hygiene, Pests and Refuse
- 16 Food safety
- 17 Personal hygiene, Sanitation and Drainage
- 18 Water supply

D PROTECTION AGAINST ACCIDENTS

Falls

- 19 Falls associated with baths etc
- 20 Falling on level surfaces etc
- 21 Falling on stairs etc
- 22 Falling between levels

Electric Shocks, Fires, Burns and Scalds

- 23 Electrical hazards
- 24 Fire
- 25 Flames, hot surfaces etc

Collisions, Cuts and Strains

- 26 Collision and entrapment
- 27 Explosions
- 28 Position and operability of amenities etc
- 29 Structural collapse and falling elements

Most of these profiles are self explanatory. However some are less clear and the definitions of a few of these have been included below:

Biocides

This category covers threats to health from those chemicals used to treat timber and mould growth in dwellings. While biocides include insecticides and rodenticides to control pest infestations (e.g. cockroaches or rats and mice), these are not considered for the purposes of the HHSRS.

Volatile Organic Compounds

Volatile organic compounds (VOCs) are a diverse group of organic chemicals which includes formaldehyde, that are gaseous at room temperature, and are found in a wide variety of materials in the home.

The majority of hazards, particularly the more esoteric ones, have very low likelihoods of occurrence and fairly low harm statistics and therefore they are not likely to result in any repairing obligation accruing to the landlord. Given the relative safety and exhaustive testing requirements associated with modern building materials hazards such as Asbestos and Biocides are now extremely rare. The most serious hazards, as might be expected, are those within the Protection Against Accidents group and, particularly, falls. It is also worth noting that the HHSRS places strong emphasis on 'social' factors such as sufficient space and appropriate security and it seems that many Environmental Health Officers have taken this on board and will act to ensure that these hazards are taken seriously by landlords.



The Formula in Detail

Figure 1 – The HHSRS Formula

	Class of Harm Weighting		Likelihood		Spread of Harm (%)
S1	= 10,000	X	$\frac{1}{L}$	X	O1
S2	= 1,000	X	$\frac{1}{L}$	X	O2
S3	= 300	X	$\frac{1}{L}$	X	O3
S4	= 10	X	$\frac{1}{L}$	X	O4

Hazard Score = (S1 + S2 + S3 + S4)

Where –
 L = the Likelihood of an occurrence
 O = the Outcome expressed as a percentage for each Class of Harm
 S = the row product for each Class of Harm.

This shows the calculation formula in detail. The inspector must consult the relevant table to derive the



The Formula in Detail

Falling on stairs		Average likelihood and health outcomes for all persons aged 60 years and over, 1987-1999					
Dwelling type & age		Average likelihood 1 in	Spread of health outcomes				Average HHSRS score
			Class I %	Class II %	Class III %	Class IV %	
Houses	Pre 1920	216	2.2	7.7	22.1	68.0	170 (F)
	1920-45	226	2.1	7.4	20.5	70.0	156 (F)
	1946-70	256	1.6	6.6	21.6	70.2	116 (F)
	Post 1970	256	1.4	6.3	25.3	67.0	112 (F)
Flats	Pre 1920	214	3.0	6.0	19.3	68.8	240 (E)
	1920-45	263	1.6	2.8	20.1	75.5	97 (G)
	1946-70	410	2.8	5.3	17.7	74.2	96 (G)
	Post 1970	409	2.6	5.2	19.4	72.8	92 (G)
All		245	1.9	6.7	21.7	69.7	134 (F)

This table, from the HHSRS Operating Guidance illustrates the average likelihood and harm spread percentages in respect of the Falling on Stairs Hazard Profile. This represents one of the more serious Hazard Profiles as it has a relatively high likelihood and the probability of injury, even if only slight, is high.




Calculation issues

- Assessment based on most vulnerable groups
- Likelihood to be assessed from table but modified for local conditions
- Harm from table spread with modification for local conditions
- Possible uplift on scores for high occupancy properties (eg. HMOs)

When calculating a hazard score the inspector is required to do so from the basis of the most vulnerable groups in society. In other words he must view each hazard from the point of view of a young child or an old person. Therefore something that may not immediately register as a hazard (an easy to open window catch on a third floor window, for example) may be seen as one due to the potential for an accident for a child or older person.

The first thing an inspector should do is assess the likelihood of an occurrence in respect of the hazard, this is done on the basis of the statistical tables but may be altered depending on the local conditions. The same procedure is then followed in respect of the spreads of harm.

It should be noted that the hazard score can be adjusted where properties are shared among multiple individuals. This is likely to be particularly relevant in respect of calculating the likelihood of an occurrence.



A Worked Example

BOX 7 Generating a Hazard Score						
	Class of Harm Weighting		Likelihood		Spread of Harm (%)	
I	10,000	X	$\frac{1}{18}$	X	4.6	= 2,556
II	1,000	X	$\frac{1}{18}$	X	10.0	= 556
III	300	X	$\frac{1}{18}$	X	21.5	= 358
IV	10	X	$\frac{1}{18}$	X	63.8	= 35
Hazard Score						= 3,505

This slide shows a worked example from the HHSRS Operating Guidance assessing a percentage class of harm based on the following scenario:

Assessing the Outcomes for Falls associated with stairs Example –

A house with three sets of steps and stairs –

1. At the front gate there are two steps. These are of rough concrete and have high risers. There is a crude loose handrail to one side.
2. At the front door there are four steps of smooth concrete. The bottom step is higher than the others. There is a steel tube handrail to one side.
3. The internal stairs have two winders at the top. The stairs are fairly steep, but not more than the average for this type of dwelling (a 1930s, detached house) and there is a handrail to one side.

There is nothing to suggest that the outcomes from a fall on the internal stairs will be anything other than average (i.e. 2.1%, 7.4%, 20.5% and 70.0% for Classes I, II, III, and IV respectively). However, the state and condition of the steps to the front door steps and those near the front gate, are such that it is judged that the Class I outcome to a person aged 60 years or more from a fall at either of these locations will be increased, particularly if that fall was in cold weather or at night. The Representative Scale Points of the outcomes are judged to be 4.6%, 10.00%, 21.5% and 63.8% respectively.

The final score of 3,505 for this hazard places it in band B which is a Category 1 hazard and the local authority would therefore be obliged to demand that it should be addressed.



Enforcement

- Local Authorities must take their housing strategy into account
- Informal action preferred for Category 2
- Formal actions available
 - Improvement notice
 - Prohibition order
 - Hazard awareness notice
 - Emergency remedial action
- Demolition and Clearance orders retained from HA 1985

The HHSRS Enforcement Guidance requires Local Authorities to take their local housing situations and strategy into account when deciding how to enforce the HHSRS. They will be required to prioritise issues which are problems locally and have a plan to deal with these effectively over time. Authorities are encouraged to attempt to resolve matters informally where Category 2 hazards exist and it seems from talking to Environmental Health Officers that this is how they will probably operate in most cases. Therefore, the majority of private landlords will find themselves receiving a letter or a Hazard Awareness Notice from their Local Authority giving them an opportunity to put matters right before any action is taken. Authorities should use the Enforcement Concordat (available at www.cabinetoffice.gov.uk/REGULATION/reform/enforcement_concordat/index.asp) which requires them to give clear practical advice on how to resolve issues and to take the most appropriate and least onerous action appropriate to the circumstances.

For Category 1 hazards the Local Authority is required to take formal action but they must take the most appropriate course of action available in the circumstances (s 5(4) Housing Act 2004) and they should only take one course of action at a time. This does not prevent the taking of an alternative course if the first one fails. The Local Authority is required to prepare written reasons for the particular course of enforcement action and why this form of action was chosen over an alternative form.

This statement is required to be served alongside improvement notices, prohibition orders, or demolition orders.



Improvement Notices

- Must specify (s13)
 - Nature of hazard and premises
 - Deficiency causing hazard
 - Date remedial action to be started (must be at least 28 days)
 - Period remedial action to be completed within
- Must also contain appeal information
- May be suspended in named circumstances
- Must be revoked when work done

Sections 13 and 14 of the Housing Act 2004 specifies the contents of an improvement notice. Section 13 covers notices in respect of category 1 hazards while section 14 covers category 2 hazards:

13 Contents of improvement notices

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates-

(a) whether the notice is served under section 11 or 12,

(b) the nature of the hazard and the residential premises on which it exists,

(c) the deficiency giving rise to the hazard,

(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,

(e) the date when the remedial action is to be started (see subsection (3)), and

(f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.

(3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.

(4) The notice must contain information about-

(a) the right of appeal against the decision under Part 3 of Schedule 1, and

(b) the period within which an appeal may be made.

(5) In this Part of this Act "specified premises", in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

Details of how such notices must be served and the procedures to be followed can be found in Schedule 1 of the Act. In general terms the notice should be served on the license holder if the property is licensed or on the person having control if it is not. Appeals against notices must normally be made within 21 days and if no appeal is made then the notice will come into effect. Local Authorities should consider whether it would be appropriate to offer financial assistance to those in receipt of an improvement notice and many authorities have set aside monies for this purpose.

Improvement notices must be revoked when the hazards they highlight have been resolved but they can also be varied or revoked in other circumstances (if enough has been done to lower the hazard from category 1 to 2, for example)

Failure to comply with an Improvement Notice is an offence punishable by a fine at scale 5.



Prohibition Orders

- Fairly extreme but may be indicated for multi-occupancy properties
- Allow the Local Authority to prohibit use of:
 - Dwelling or HMO
 - One or more flats in building or building
 - Some or all of common parts
- Required contents similar to improvement notices
- Appeal to RPTS

A more severe form of action is provided by the Prohibition order. Local Authorities should only use this where the hazard is a serious threat to health or they have need to prohibit a specific use of the dwelling (to prevent overcrowding for example). The contents of the Order are much the same as those required by the Improvement Notice and are set out in s22 and 23 of the Act. Again, s22 covers category 1 hazards while s23 refers to category 2 hazards:

22 Contents of prohibition orders

(1) A prohibition order under section 20 or 21 must comply with the following provisions of this section.

(2) The order must specify, in relation to the hazard (or each of the hazards) to which it relates-

(a) whether the order is made under section 20 or 21,

(b) the nature of the hazard concerned and the residential premises on which it exists,

(c) the deficiency giving rise to the hazard,

(d) the premises in relation to which prohibitions are imposed by the order (see subsections (3) and (4)), and

(e) any remedial action which the authority consider would, if taken in relation to the hazard, result in their revoking the order under section 25.

(3) The order may impose such prohibition or prohibitions on the use of any premises as-

(a) comply with section 20(3) and (4), and

(b) the local housing authority consider appropriate in view of the hazard or hazards in respect of which the order is made.

(4) Any such prohibition may prohibit use of any specified premises, or of any part of those premises, either-

(a) for all purposes, or

(b) for any particular purpose,

except (in either case) to the extent to which any use of the premises or part is approved by the authority.

(5) A prohibition imposed by virtue of subsection (4)(b) may, in particular, relate to-

(a) occupation of the premises or part by more than a particular number of households or persons; or

(b) occupation of the premises or part by particular descriptions of persons.

(6) The order must also contain information about-

(a) the right under Part 3 of Schedule 2 to appeal against the order, and

(b) the period within which an appeal may be made,

and specify the date on which the order is made.

(7) Any approval of the authority for the purposes of subsection (4) must not be unreasonably withheld.

(8) If the authority do refuse to give any such approval, they must notify the person applying for the approval of-

(a) their decision,

(b) the reasons for it and the date on which it was made,

(c) the right to appeal against the decision under subsection (9), and

(d) the period within which an appeal may be made,

within the period of seven days beginning with the day on which the decision was made.

(9) The person applying for the approval may appeal to a residential property tribunal against the decision within the period of 28 days beginning with the date specified in the notice as the date on which it was made.

(10) In this Part of this Act "specified premises", in relation to a prohibition order, means premises specified in the order, in accordance with subsection (2)(d), as premises in relation to which prohibitions are imposed by the order.

As with improvement notices, prohibition orders may be appealed within 28 days to the RPTS. It is also possible to ask the Authority to consent to a specific use of a prohibited premises and they must not unreasonably withhold such consent. Any refusal to such a request must be notified within 7 days.

Failure to comply with a Prohibition Order is an offence punishable by a fine at scale 5 with a further fine of up to £20 per day that the Order continues to be flouted after conviction.

It seems that many Local Authorities are using Prohibition Orders as a default measure, particularly for Category 1 hazards. One of these Orders has been appealed to the RPTS and their decision can be found on their website at http://www.rpts.gov.uk/Indexes/CAM_HA_PROHO_00MB_2006.htm. In short, the RPTS modified the Order which was prohibiting the rental of an upstairs flat altogether due to the stairs being very steep and limited it to a prohibition on letting to young children and the elderly. This is an encouraging sign as it shows that the RPTS is prepared to take action in respect of excessive measures and apply common sense principles.



Hazard Awareness Notice

- Hopefully the normal form of action
- Should be used when Landlord is cooperative
- Similar service and appeal procedure as for Improvement Notice
- No action will lead to more severe forms of action

Hopefully the Hazard Awareness Notice will be the normal form of enforcement action and should be used where the Landlord has shown a willingness to cooperate. However, indications are that Local Authorities are not choosing to use this for category 1 hazards as it has no enforcement provisions attached. The required information is laid down by section 28 of the act:

28 Hazard awareness notices relating to category 1 hazards: duty of authority to serve notice

(1) If-

(a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

serving a hazard awareness notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2) A hazard awareness notice under this section is a notice advising the person on whom it is served of the existence of a category 1 hazard on the residential premises concerned which arises as a result of a deficiency on the premises in

respect of which the notice is served.

(3) The notice may be served in respect of the following premises-

(a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may be served in respect of the dwelling or HMO;

(b) if those premises are one or more flats, it may be served in respect of the building containing the flat or flats (or any part of the building) or any external common parts;

(c) if those premises are the common parts of a building containing one or more flats, it may be served in respect of the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4) The notice may not, by virtue of subsection (3)(b) or (c), be served in respect of any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied-

(a) that the deficiency from which the hazard arises is situated there, and

(b) that it is desirable for the notice to be so served in the interests of the health or safety of any actual or potential occupiers of one or more of the flats.

(5) A notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(6) A notice under this section must specify, in relation to the hazard (or each of the hazards) to which it relates-

(a) the nature of the hazard and the residential premises on which it exists,

(b) the deficiency giving rise to the hazard,

(c) the premises on which the deficiency exists,

(d) the authority's reasons for deciding to serve the notice, including their reasons for deciding that serving the notice is the most appropriate course of action, and

(e) details of the remedial action (if any) which the authority consider that it would be practicable and appropriate to take in relation to the hazard.

(7) Part 1 of Schedule 1 (which relates to the service of improvement notices and copies of such notices) applies to a notice under this section as if it were an

improvement notice.

(8) For that purpose, any reference in that Part of that Schedule to "the specified premises" is, in relation to a hazard awareness notice under this section, a reference to the premises specified under subsection (6)(c).

There is no specified time by which such a notice must be complied with although if it is to be appealed this must occur within 21 days. The same rules for service and appeals apply to Hazard Awareness Notices as for Improvement Notices and are to be found in Schedule 1 of the Act.



More Extreme Action

- Ultimately Court can order access for work
- Also possible for RPT to determine lease
- Management orders available

The Court has the power to force access for necessary works to be done. It is also possible for a head lessor to ask the Residential Property Tribunal to vary or determine the lease to allow for works to be done. It will also be possible for the Authority to seek a Management Order allowing them to take over the management of properties where work has not been done and they can then do this themselves and take such monies from rental payments as are required to compensate them for expenses incurred.




Appeals

- Appeals to RPTS
- From RPTS to Lands Tribunal with permission
- From Lands Tribunal to Court of Appeal
- NB. No appeal for failure to allow appeal except by JR

Appeals over decisions relating to the HHSRS must be made through the Residential Property Tribunal Service (www.rpts.gov.uk). The procedural code for cases before the RPTS is laid out by SI 2006/831 and this is not dissimilar to that set out for the Courts by the Civil Procedure Rules. Unfortunately decisions of the RPTS are not directly binding on other RPTS tribunals. Based on the precedent set by the RAC and the other tribunals which have preceded the RPTS costs are unlikely to be awarded and are severely limited in any event.

From the RPTS it is possible to appeal to the Lands Tribunal (www.landtribunal.gov.uk) but permission is required from the RPTS or Lands Tribunal to do so. From the Lands Tribunal appeals proceed directly to the Court of Appeal. It should be noted that the right of appeal is not guaranteed and it is perfectly possible for permission to appeal to be refused. The recent case of *R. (on the application of Sinclair Investments (Kensington) Ltd) v The Lands Tribunal* [2006] HLR 11 highlights this where The Lands Tribunal refused to hear an appeal from the LVT. The only route open to appeal this was through Judicial Review in the High Court on the grounds of *Wednesbury* unreasonableness. This was rejected by both the High Court and the Court of Appeal on the basis that the decision to refuse permission was not so unreasonable that no reasonable person could have come to it.



Problems

- Inspectors cheating system!
- HHSRS scores on properties in repair
- Potential to change view of what disrepair represents

Unfortunately the system is not being used entirely appropriately. Many inspectors are arriving at properties with a clear idea of what they wish to achieve and then engineering the process to generate the score they need. This is particularly easy to do with certain hazard areas which have a reasonable risk of death or other extreme risks as the multiplier for this outcome is very high. Therefore a small adjustment in a likelihood rating can cause a large adjustment in the Hazard score.

A second area in which a wily inspector can seek to influence the outcome is by how he groups hazards together. For example, an inspector might group together all the windows in a 4 floor property and assess them together for security purposes and thereby enforce the fitting of locks to all windows where it might really only be appropriate for those on the ground floor.