



In collaboration with



# **Awaab's Law: Legal FAQs for Social Housing Providers**

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# Introduction

Aico, in collaboration with Trowers & Hamblins, has developed this FAQ document to provide timely and relevant information to registered social landlords following the introduction of Awaab's Law to the Social Housing Regulation Act 2023. This legislation requires landlords to investigate and fix reported health hazards within specified timeframes.

The questions included in this FAQ were sourced directly from registered social landlords who participated in Aico's Social Housing Professional Network (SHPN) events held across the UK in May, June, and July 2024. These events brought together over 800 delegates from more than 300 social housing organisations to share best practice and practical guidance and support on the new regulations, driving positive change in the sector. Each session saw the examination of Aico's "Building A Safer Future Together" research paper, insights into legal perspectives on access, building safety, and damp and mould with Trowers & Hamblins, and discussions on the use of technology to create safer homes.



# **Landlords' Obligations and Compliance**

## **Timelines for Compliance**

- **How long will landlords have to comply once the regulations for Awaab's Law are confirmed? Will there be time to upskill staff?**

The time to upskill is now: given that Awaab's Law is being extended to the private rented sector by virtue of the Renters' Rights Bill, which had its first reading in the House of Commons on 11 September 2024, and the Government has said it wants to see enacted by summer 2025, it stands to reason that the Regulations are likely to be approved shortly - but there is still no date in this respect. Once the Regulations are approved, they will have to be complied with.

- **What happens if a landlord is unable to meet the timeframes for inspections, production of reports, etc.?**

If a landlord cannot meet the timeframe for inspections and report production, that is a breach of the protocol. In such circumstances, tenants' solicitors will no doubt draw that fact to the attention of the court (if proceedings are issued), which they are entitled to do pursuant to the protocol, and they will argue that costs consequences should follow. From a practical point of view, if a landlord loses at trial, whether or not a report was produced late is irrelevant.

Ultimately, if a landlord cannot inspect a property and produce a report in the time limits set by the protocol, they may not be able to rely on their evidence at all - and that is more of an issue for a landlord, as the court will then only have the report of the tenant's expert to confirm what the property issues are. However, we have found that as long as the reports are produced before any court proceedings are issued (if the matter gets that far) and whilst negotiations are still ongoing, there is usually no issue in relying on that report should proceedings be issued. However, it should be noted that judges are highly reluctant to allow a landlord to obtain a report after proceedings have been issued, and at this stage, unless there is a very good reason as to why a report was not obtained in the protocol period, any request to be allowed to rely on one will most likely be refused.

If a landlord is unable to meet the deadline, which will be set out as part of Awaab's Law, the tenant will be entitled to compensation, unless the landlord can prove they used all reasonable endeavours to comply.

## **Standards for Repairs and Inspections**

- **How accurate do repair timescales need to be when provided to a tenant? For example, is “we will repair X within 7 days” sufficient?**

In essence, sufficient details should be given to a tenant so they know what is being repaired and within what timescales. It may therefore be sufficient to state “we will repair X within 7 days”, but equally, depending upon what the issue is, more detail may need to be given. There is no hard and fast rule.

- **Is there any discussion of minimum standards for damp and mould education and experience for surveying, inspection, and/or investigation?**

In the context of Awaab’s Law, the Consultation document proposed that the expectation is that whoever conducts the investigation will hold the right skills and experience to determine whether or not a hazard exists that poses a danger to a resident’s health and safety. No other guidance or requirements have been given. It would be wise to consider now who has the right skills and experience to undertake the investigations – and it should be remembered that Awaab’s Law does not just cover damp and mould.

- **What are the right skills and experience for the person conducting the investigation? Does it cover and include designated qualifications (e.g., HNC, surveying degree, etc.)?**

The Consultation document simply stated that the person undertaking the investigation for the purposes of Awaab’s Law must have the right skills and experience. There are no designated qualifications and, generally speaking, where experts giving evidence in court are concerned, there is no requirement for them to have any particular qualifications. However, we have found that judges are more inclined to prefer the evidence of an expert who has qualifications rather than someone who is an expert by virtue of their experience. It is worth bearing in mind that the position under Awaab’s Law is different should a matter ever progress to court proceedings, i.e. the person is investigating a complaint rather than acting as an expert.

## Use of Technology

- **Would installation of environmental sensors help in the defence of a damp and mould case?**

Yes - depending upon the data gathered by the environmental sensors but certainly it can do no harm to have the information gathered by such technology when collecting evidence in relation to a housing conditions claim. It should be remembered that if any such evidence does exist, the landlord will be under a duty to disclose it to the tenant's solicitors in the course of any housing disrepair claim.

- **Are risks identified by technology (e.g., high risk of damp and mould) classed as notice of a potential hazard?**

For the purpose of any housing condition claims, once that information is available to a landlord, they are on notice of an issue at the property whether that is disrepair, unfitness for human habitation or a potential hazard. It should therefore be addressed as soon as the landlord is aware that there is an issue.

- **Do you think there will be a crossover between consumer standards, Awaab's Law, and the Building Safety Act?**

There certainly may be some crossover between the consumer standards and Awaab's Law: under the new consumer standards, landlords must ensure that tenants are safe in their homes, and therefore a breach of the consumer standard will also no doubt amount to a breach of Awaab's Law, and vice versa.

The Building Safety Act 2022 is a distinct piece of legislation, which was a direct result of the tragedy at Grenfell Tower in order to implement the recommendations of Dame Judith Hackitt in her 2018 review of fire safety and building regulations, so there is no real overlap in this respect.



# **Responding to Claims and Legal Actions**

## **Expert Evidence and Legal Proceedings**

- **Do differing opinions from surveyors cause an issue during a disrepair claim?**

The answer is that this can cause an issue where neither surveyor will budge from their findings and observations. It is for this reason we advise that it is a good idea for surveyors to undertake a joint inspection as there is less scope for disagreement, and the surveyors are more likely to talk to each other during the inspection. It can also be a good idea to arrange for the surveyors to have a discussion in order to narrow the issues between them after an inspection and after reports have been produced.

From a practical point of view, if the difference in opinion and recommendation by way of repairs is not significant, it may be more cost effective simply to agree to undertake any additional repairs recommended by the tenant's expert rather than proceeding to, potentially, a full blown trial, given the costs that will be incurred in this respect. It is very rare for there to be significant disparities between experts when recommending what works need to be undertaken. The more common disparity is in relation to the valuation of the repairs, where a tenant's expert concludes that the repairs will cost many thousands of pounds and the landlord's expert attributes possibly on a few hundred pounds to the works. In such instances, there is case law (which although not binding is persuasive) which holds that it is the actual cost to a landlord of undertaking repairs that is the relevant measure of the costs rather than the inflated figures that a tenant's surveyor attributes to any such works.

## **Expert Evidence and Legal Proceedings**

- **How do you foresee the courts dealing with differences in interpretation of HHSRS risks between experts? The scoring is very open to interpretation.**

Courts are often faced with situations where there is a difference of interpretation between experts. As set out previously, in such instances, it is advisable for experts to undertake joint inspections or have discussions in order to narrow the issues between them – and the court would expect experts to have done this. In any fast track or small claims track proceedings, the court will not be hearing live evidence from experts and will only allow each party to rely on a written report. If, after discussions, there are still discrepancies between the two experts, these can be summarised in a Scott Schedule and a judge will decide, having considered what each expert says, as to whose evidence they prefer.

- **Have any organisations changed their approach to disrepair claims in response to recent case law, requiring claimants to go through the complaints process first?**

It should be noted that the case law did not actually decide that it was a requirement that claimants go through a complaints process first.

Having said that, a number of organisations have indeed changed their approach and are arguing that where a potential claimant/tenant has not previously complained to them about disrepair, their complaints policy should be evoked first. Moreover, even if they had previously complained, landlords are arguing that the complaints process is a form of dispute resolution in mediation. The issue is that there is still nothing to stop tenant's solicitors from pressing ahead with a claim under the Protocol.

The case law in question (*Churchill v Merthyr Tydfil*), ultimately supports alternative dispute resolution (ADR). Therefore, the Court of Appeal held that at the stage when proceedings had been issued, the court would consider whether or not to stay the proceedings in order to allow for parties to engage in ADR.

## **Handling No-Win-No-Fee Solicitors**

- **We are seeing an upsurge of no-win-no-fee solicitor firms contacting our residents asking if they have damp and mould. How can we combat this as an organisation?**

In England, social landlords have faced an upsurge of no-win-no-fee claims for a number of years. However, in some other jurisdictions this is a relatively new phenomenon. Social landlords in England have ensured that they communicate with residents in terms of ensuring residents know how they should report disrepair issues and warning them to be mindful of individuals who purport to be from a landlord organisation (which happens a lot). Where a person is asserting that they are from the landlord organisation, but they are not, this could be reported to the police: it is a potential criminal offence – but the police would have to investigate and any potential offence will differ from jurisdiction to jurisdiction.

Where there is any suggestion that tenant's solicitors have acted inappropriately, a complaint to the solicitors' governing body should be made (for example, in England this is the Solicitors Regulation Authority).



# **Residents' Rights and Landlord Responsibilities**

## Tenant Behaviour and Legal Recourse

- **How is new legislation balancing the need for the tenant to behave in a tenant-like manner, as per the Housing Act and the case of Warren vs Keen (1953)?**

There is a general principle in law that tenants must use their premises in a tenant-like manner. A tension has risen as to what this entails since the Housing Ombudsman's report into damp and mould in October 2021, which essentially criticised social landlords for dismissing many tenant complaints of damp and mould within their properties as being due to their "lifestyle".

The principle in law still stands i.e. tenants must use their properties in a tenant-like manner and that, arguably, includes activities such as drying clothing over radiators which will encourage the growth of mould. However, as is the case in any housing conditions claim, landlords must be very cautious when attributing issues to a tenant's use of the property: handing out leaflets and giving some verbal instructions is not enough. Landlords should investigate issues and positively engage with tenants: whilst tenants' actions may not help matters, there may be an underlying housing conditions issue – and a hazard may be present contrary to Awaab's Law.

- **What does the legal recourse route look like for residents in relation to Awaab's Law? Would tenants have to actively take their landlord to court?**

Yes: if a landlord does not comply with what we envisage will be in the Regulations, a tenant will have to apply to the court for a remedy.

- **Can we offset tenant damage (recharge) against a disrepair claim?**

The short answer to this is yes: evidence as to how the rechargeable repair has arisen and the cost should be kept, so it can be produced as evidence if necessary. There should be a tenancy clause which states that tenants will be recharged for any damage that they have caused to the property which the landlord repairs.

## **Relocation and Compensation**

- **If you relocate the tenant, does the timeframe for repairs no longer apply?**

Where a tenant is decanted to alternative accommodation, we would always argue that as they are not living in a property suffering from disrepair, there is no loss of use of enjoyment, and therefore no damages are payable from the point they are decanted. However, there is case law where tenants have been awarded significant sums of damages for the very fact that they have been displaced from their own home and have to live in alternative accommodation on a temporary basis. Therefore, whilst we have successfully argued on some occasions that no damages should be payable, landlords should be aware that there is case law which supports an argument that damages are indeed payable in such instances. The courts' reasoning has been that tenants should be compensated for the fact they have had to move from their home.

If the move is permanent, damages should only be awarded until the date a tenant moves out. However, it should be remembered that in such circumstances it is likely that a home loss payment must be made to a tenant, as well a disturbance allowance payment.

- **Where do we stand when a tenant refuses remedial works to resolve mould and condensation issues?**

It is assumed for the purposes of this question, that a tenant is refusing remedial works after a letter of claim has been served. If that is the case, then the response above should hopefully respond to this query. If access is still refused, landlords should consider making an application for an injunction.

- **Where do we stand if a complaint or disrepair claimant refuses access for repairs to bolster their case?**

In such instances, an application for an injunction should be made as soon as possible. As with gas safety access injunctions, a landlord should be able to evidence that at least three attempts at access have been made which have all been denied. Before making any such application, a final letter should be sent (often sending such letters on solicitors letterheaded paper is much more persuasive). This communication should give the tenant one final opportunity to allow access, giving them clear deadlines and instructions as to who they should contact and the deadline by which they should do so. The letter should then go on to warn the tenant that if they do not comply, court action will be taken, which will include a claim for costs.



# Access to Properties

## **Proving and Documenting Access Attempts**

- **What evidence would be sufficient to prove the attempts of access?**

In essence, a landlord will need clear evidence of the attempts at access. This can include dated photographs of operatives outside properties to show they have attended for a pre-arranged appointment, appointment letters sent to tenants – and any confirmation received that the tenants will allow access on the dates given, or an attempt at contacting a tenant that is made without any response, file notes of any conversations with tenants as to why they will not allow access. Any such evidence should be exhibited to a witness statement from a person within an organisation who is the main contact/person dealing with the issues. The witness statement should set out in chronological order all the attempts of access and all of the issues that have been encountered.

- **Is there a timeline between the 3 no-access visits for these to be classed as “3 no-access visits”?**

There is no hard and fast rule in this respect, but if there are significant delays between each no access visit, then we would advise that other visits are arranged, e.g. if there are six months between each access attempt, we would certainly advise that two more attempts were made, giving no more than two to three weeks between each one. However, we would stress there are no hard and fast rules but without any explanation, the gap should not be too long (e.g. sometimes tenants are unwell and are hospitalised for long periods of time which would affect the timeline).

- **Has any landlord ever had a financial penalty for forcing entry?**

In our experience, we have never come across a case where a tenant has taken proceedings for damages for forcing entry – however, there is always a first time, and the law is quite clear as regards a tenant’s right to peaceful enjoyment of their property i.e. by forcing entry, a landlord is interfering with that right. As well as seeking damages for interfering with a tenant’s right to quiet enjoyment, a tenant may, for example, allege other damage caused by a landlord or that items have been removed by the landlord/its agents/contractors. It is for all of these reasons that we would not recommend forced entry.

## **Legal Methods for Gaining Access**

- **What is the difference between a warrant and an injunction? Which would be a preferred method when experiencing challenges with gaining access?**

In the context of gaining access to a property by a social landlord, pursuant to the Environmental Protection Act 1990, local authorities can obtain warrants from a magistrates' court where they have been refused access to undertake works to deal with a statutory nuisance. It is for this reason that most social landlords must apply for an injunction, as this power is unavailable to them. The difference between the two is that the warrant is granted by a Magistrates' Court, which is a criminal court, whereas an injunction is a civil remedy that is granted by a County Court.

- **With an injunction, if the resident can't be located or refuses to answer the door, what next?**

As advised above, if problems persist, then a landlord will be left with no choice but to make an application for possession of the property. Possession action by a social landlord, is an action of last resort and evidence of the fact that a landlord has tried other means in order to gain access, e.g. securing an injunction, which is still being disobeyed, will usually be sufficient evidence for the court to grant a possession order (assuming discretionary grounds for possession are relied on). It should be remembered that if it is suspected a property has been abandoned, a tenant will have lost their security of tenure. In such circumstances, a Notice to Quit can be served after which possession action can be taken upon the basis of that notice.

- **Can the specific access clause, in terms of access for fire safety inspections and fire doors in particular, be enforced after three attempts and a letter?**

As with any refusal of access, if this continues, we would advise a landlord to seek an injunction order and for these purposes, at least three attempts at access is evidence of the fact that this is being refused. Ultimately, a landlord has the right to access a tenant's property having given reasonable notice of the requirement to do so. It is advisable to have a robust access clause in tenancy agreements which covers every eventuality insofar as access is concerned.

## Handling Refusal of Access

- **How do we deal with tenants refusing access due to advice from their solicitors during disrepair claims?**

The advice as to when access should be given to complete repairs is as set out previously. If access issues persist, both the tenant and their solicitors should be informed that if access is not given, an application for an injunction will be made. If these issues persist, then the injunction application should be made without further delay.

- **At what stage can we go into a property to carry out repairs when the property in question is subject to an ongoing claim?**

The starting point is that in any claim for damages, parties should take care not to tamper or interfere with evidence. Therefore, if a landlord goes into a property where a letter of claim has been received and undertakes repairs before the tenant's expert has had an opportunity to inspect the property, this will effectively destroy the evidence.

Pursuant to the Pre-Action Protocol for Housing Conditions Claims (England) (the Protocol) , it is envisaged that either a single joint expert inspects the property (which rarely happens given the experts proposed by tenants' solicitors) or a joint inspection by the parties' nominated experts takes place. Assuming that takes place within the Protocol time limits (i.e. within 20 working days of the landlord's response pursuant to paragraph 6.2 of the Protocol) it should in most cases be acceptable to a landlord. However, landlords should consider the following:

- If there are repairs that need to be done on an urgent basis, the landlord is entitled to undertake these before any inspection by experts takes place. Whilst, historically, it was accepted that issues such as uncontrollable leaks fell into this category, increasingly, landlords are rightfully arguing that damp and mould issues are serious given the health and safety risk they pose. Consequently, many landlords are dealing with these issues before experts inspect. In most instances, we would envisage that controlling the mould through a mould wash before major repairs are undertaken would be all that is necessary. If repairs are undertaken in such circumstances, it is vital that records are kept to exactly what was done, and photographs are taken of the "before" and "after" state of repairs.
- Once experts have inspected, there is absolutely no reason why repairs cannot be undertaken. Many tenant solicitors argue that, in accordance with the Protocol, unless and until a schedule of works (which includes an estimate of costs) is agreed by them, then works cannot commence. However, this is not what the protocol states, and there is absolutely no requirement for tenant solicitors to agree the works at this stage and therefore it is perfectly acceptable to inform the tenant's solicitors that works will be completed in accordance with the landlord's expert's report. Should any items remain outstanding thereafter which the tenant's solicitors say should be completed, these can be addressed during any negotiations at a later date.

## **Court Orders and Resistance**

- **Is there any resistance from the judicial system to grant injunctions and/or possession orders?**

Where an application for either of these is made that is supported by evidence, the courts are willing to make orders. It is always important to seek legal advice as to the strength of your case, what you need to prove and if you have the evidence to prove it. For example, if you are seeking an access injunction, if you can demonstrate that it is necessary (usually by providing evidence that there have been at least three attempts at access and setting out any relevant legislation/tenancy conditions), there is no reason why an order should not be made - there really is no defence to such an application.

- **What percentage of no access cases that go to court ends with access being granted?**

If the query is in “what percentage of cases does a court grant access”, the answer is that we have never had an injunction application where a court has not made an order. However, if the query is as to what percentage of tenants still refuse access once an injunction has been granted, whilst this is very few, there are instances where tenants still refuse to grant access. In such instances we have ultimately made applications for possession. In such cases, there have usually been other issues (e.g. mental health problems, abandonment by tenant).



# **Health, Safety, and Emergency Access**

## **Emergency Situations**

- **If there is an immediate (emergency) risk, including to other houses/flats in the area, does this make a difference to access?**

Dependent on the nature of the emergency, then it may be possible to seek the assistance of external parties in gaining access, e.g. if there is a danger that a gas leak has been identified then gas companies may be able to force access. Depending on the situation, police have sometimes forced entry in order to undertake a safe and well check which has assisted in gaining access. Dependent on the circumstances, once the police have gained access then it may be easier to undertake emergency repairs.

The principle remains that forced access could be seen as an interference with a tenant's right to quiet enjoyment of their property. Depending upon the circumstances of the immediate risk, as stated above, third parties may be able to get involved in order to gain access. Ultimately, if a landlord forces access then whilst we would never advise that this is done, we would certainly advise that all necessary precautions are taken in order to prevent any issues arising/minimising such issues, i.e. the entry into the property should be recorded, there should be at least two people present, a detailed note should be prepared as regards what works are undertaken and only those rooms that operatives have to enter should be entered. Ideally, anything action should be recorded, and operatives should leave as soon as possible. If the forced access has resulted in a lock change, then clear instructions should be left on the front door as to where keys can be obtained and the tenant should be contacted, e.g. by text on their last known number, to confirm the whereabouts of the keys.

- **Can you force entry to a property due to Health and Safety concerns without obtaining an injunction for the safety of residents?**

If there are health and safety concerns, then we would suggest that the police are contacted to undertake a safe and well check. Police can force entry in certain circumstances where there is a concern for the safety of residents within a property.



# **Hazards and Emergency Repairs**

## **Mould and Other Hazards**

- **Is mould removal the removal of a hazard so the repair sits outside of Awaab's Law?**

Under the proposals in the consultation document, the point at which a landlord becomes aware of a potential hazard is the point at which legal obligations under Awaab's Law will begin. Therefore, if a tenant reports an issue with mould, this is a potential hazard, and as such Awaab's Law is likely to apply, and the deadlines of inspecting, reporting, and completing the works will need to be complied with.

- **How will tenants who clean the mould themselves affect Awaab's Law timescales?**

If, pursuant to Awaab's Law, a landlord has been notified of a hazard which consists of mould, if the landlord has investigated this and concluded that this is a hazard, it is for the landlord to address that hazard within the timescale specified by Awaab's Law. What a tenant has or has not done should not, and in the eyes of a court, will not detract from a landlord's duty to address mould. Tenant's may well attempt cleaning the mould, but they may well not do so successfully.

- **What would classify as emergency repairs? Cat 1 hazards under HHSRS only, or other repairs?**

If the query is in relation to emergency repairs generally and when a landlord should classify them as such, in order to gain emergency access to a property, then a landlord should be guided by what their own published definition of emergency repairs is. Please see response above as to when repairs can be completed as damp and mould can certainly be treated as an emergency repair.

## **Electrical and Urgent Repairs**

- **Is there an update on the electrical element for the social housing regulations act? (5-year EICR, PAT testing, potential leaseholders being included?)**

There is no update as of yet but given the new Government's commitment to improving standards for tenants, it is probably something that will be addressed sooner rather than later!

- **Would a C2 classification on an EICR need to be rectified within the set timescale to comply with Awaab's Law?**

Whether or not this would fall within Awaab's Law would depend upon the assessment that is made by the person investigating at the relevant time. However, as this classification flags a potentially dangerous fault, it would be highly advisable to rectify this as a matter of urgency in any event.



Aico, an Ei Company, are the European market leader in home life safety, pioneering new technologies and offering high quality alarms, developed and manufactured in Ireland. All Aico alarms meet UK standards and offer a variety of sensor types to guarantee protection for every home, the cornerstone of which is delivering education, quality, service and innovation. Aico have expanded their Connected Home offering through HomeLINK. HomeLINK are a multi-award-winning high-tech software team within Aico that leverage cutting edge home integration and analytic technologies to address the needs of social landlords and their residents.

With new innovations in Internet of Things (IoT) technologies, the notion of a connected home could prove a real asset in making our homes not only more sustainable, but also more efficient and ultimately safer – with a focus on wellbeing. Adding another dimension to home life safety, Aico strive to create safer, healthier homes.



Trowers and Hamlins are an international law firm with over 170 partners and more than 1000 people located across the UK, Middle East and Asia. They are the market-leading law firm in social housing, and in local authority advice. Combining these disciplines gives them an unsurpassed track record of local authority housing advice.

Trowers and Hamlins boast extensive expertise in legislation relevant to the social housing sector. This includes but is not limited to:

- Housing Acts
- Landlord and Tenant Law
- Regulatory Compliance

With an in-depth understanding of disrepair issues and fire safety compliance, Trowers and Hamlins can offer invaluable guidance to social housing providers. Trowers can assist in navigating complex legal frameworks and ensuring adherence to regulatory standards, thereby mitigating risks and enhancing safety within social housing properties.