

**Awaab's Law Consultation
CWAG Response
5th March 2024**

Introduction

Councils with ALMOs Group (CWAG) represents stock owning local authorities where council housing is managed by ALMOs. There are currently 19 local authority members managing around 230,000 properties across England. CWAG is a Special Interest Group of the Local Government Association.

Our members fully support the objectives of Awaab's Law as the right thing to do for tenant's safety. In seeking to establish firm timescales and associated arrangements, the consultation has opened up discussions within the sector around how best to deliver these measures.

If you require any further information regarding this submission, please contact Alison Freeman (CWAG Policy Officer) email: alison.freeman@manchester.gov.uk

Summary

Our comments and concerns are briefly summarised below:

Criteria for determining whether a repair falls within the scope of Awaab's Law

The proposal to extend the 29 HHSRS hazards is problematic as it potentially extends Awaab's Law into areas such as overcrowding which will be difficult for landlords to address within the suggested timescales. The original campaign to establish Awaab's Law focussed on issues where there is 'an immediate or imminent risk of harm' to those living in the household; we believe this is a better definition ensuring both the physical condition of the property and vulnerability of the household are taken into account in determining which repairs are in scope.

Using the 29 HHSRS hazards as the test criteria risks undermining the original intentions of Awaab's Law and creating new expectations around repairs generally that will be difficult to deliver within the proposed timetables, as well as opening up new routes to litigation and Right to Repair 'claim farmers' who profiteer within this sector.

Focussing the definition of repairs in scope on those where there is an immediate or imminent risk of harm to the household is essential.

Timescales

Our members support the proposed timescales for emergency and urgent repairs, indeed these are broadly in line with current practice. However, we are concerned that the proposed timescales don't take into account non-standard repairs or those requiring specialist contractors or materials. Whilst the initial inspection may be undertaken quickly, the root cause may not have a quick fix and may require considerable time to set up works contracts, raising concerns around legal action and compensation claims.

Whilst the consultation does include reference to '*certain limited circumstances*' where *fixed time limits will not be possible* for reasons '*beyond the control*' of the landlord. It would be helpful to

identify a specific process for varying the timetable to be agreed by both the landlord and the tenant as an additional mechanism for dealing with certain complex cases.

The timescales within the consultation are stated in calendar days which creates a discrepancy with Right to Repair timescales, bringing the two arrangements into line would be helpful.

In addition, the requirement to provide a written response within 48 hours will be extremely challenging where investigations require the input of specialist and technical staff or external contractors. The 48-hour period also appears to cover weekends which are not currently resourced for this type of reporting.

Decanting

The inclusion of a requirement to provide decant accommodation will be difficult to deliver in certain circumstances as available temporary accommodation is already oversubscribed due to homelessness pressures. Many councils simply do not have properties available to decant people into. The decanting measures set out in the consultation risk adding to the backlog of households placed in hotels as there is no suitable temporary or decant accommodation available. Recourse to hotels is an expensive and unsuitable option, particularly for families, breaching the 6-week limit may be unavoidable.

Litigation and legal costs

We have concerns that without action to address the problem of Right to Repair 'claim farmers', Awaab's Law will exacerbate current problems with 'no win on fee' litigation as it has the potential to open up new opportunities for litigation.

Alternatively, the introduction of Awaab's Law would be an opportunity for a reset, establishing the principle that disrepair cases should in the first instance be dealt with through Awaab's Law with any subsequent problems referred to the Social Housing Ombudsman. Recourse to litigation would then be available where issues remained unresolved.

Raised Expectations and Unintended Consequences

Some councils have raised concerns that in its current form Awaab's Law raises expectations on issues such as overcrowding and may be seen by some as a route to bypass transfer and waiting lists. It may also lead to an increase in litigation and compensation claims due to the more subjective approach to categorising repairs. It is important that Awaab's Law operates consistently and fairly and is not used as a mechanism to gain a rehousing advantage or financial compensation.

Cost Implications

The financial impact assessment in the consultation is flawed as it is based on the argument that this is repair work that landlords should and would need to do anyway and therefore shouldn't cost more overall. Whilst the timescales for inspections and emergency repairs may be similar to current arrangements, there is a very real intention to raise the bar on speed which will inevitably cost significantly more. We are already seeing evidence of increased demand for specialist repair services which given the limited pool of specialist contractors and surveyors is leading to escalating costs at a local and contractual level.

We are keen to highlight that the additional cost burdens arising from Awaab's Law are in addition to the additional costs associated with a number of new initiatives that are being introduced

concurrently within the sector which taken together will have a significant cumulative financial impact on already stretched Housing Revenue Accounts.

Questions

Question 1. Do you agree that Awaab's Law should apply to all HHSRS hazards, not just damp and mould? (Y/N)

No

Question 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 or safety of the resident? (Y/N)

Yes

Question 3. If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text).

Whilst we agree with the 'significant risk' threshold that takes into account both the physical hazard and the needs of the resident, this is a subjective evaluation and further clarification, and guidance would be helpful for consistency of interpretation. It is important to have arrangements that both treat people fairly and are perceived to be fair.

Using the 29 HHSRS hazards as the test criteria risks undermining the original intentions of Awaab's Law and creating new expectations around repairs generally that will be difficult to deliver within the proposed timetables, as well as opening up new routes to litigation and Right to Repair 'claim farmers' who profiteer within this sector.

Overcrowding should not be included as this is predominantly a housing supply issue. If included, this has the potential to quickly overwhelm the system as social landlords simply don't have the properties to move people into. The crowding / space hazard is a wider policy issue relating to new housing supply which will require different policy interventions to address.

Focussing the definition on repairs where there is an immediate or imminent risk of harm to the household is essential.

Question 4. Do you agree with the proposal that social landlords should have 14 calendar days to investigate hazards? (Y/N)

Yes – see comment Q6.

Question 5. Do you agree that medical evidence should not be required for an investigation? (Y/N)

Yes

Question 6. If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

The use of calendar days is potentially problematic as it creates a discrepancy with Right to Repair timescales, bringing the two arrangements into line would be helpful.

Question 7. Do you agree with the proposal for registered providers to provide a written summary to residents of the investigation findings? (Y/N)

Yes

Question 8. Do you agree with the minimum requirements for information to be contained in the written report? (Y/N)

Yes

Question 9. Do you agree registered providers should have 48 hours to issue the written summary? (Y/N)

No

Question 10. If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

Whilst we agree with the proposed requirement for a written summary following an investigation, this section of the guidance is confusing in places and the timescales likely to be difficult to deliver in more complex cases.

The following issues are highlighted:

Is the written summary of investigation findings a 'summary' or a 'report' both terms are used – is there a difference? Consistency on terms would be helpful.

The timescale for issuing the report/ summary is confusing, is it 'within 14 calendar days' of the landlord being made aware of the hazard (Proposal 2) or is it within 48 hours of the visit to the property (para 81)?

Para 81 includes a 48-hour turnaround for the report / summary if the landlord isn't able to respond immediately to the problem. The requirement is for the report to set out proposals for rectifying the problem within 48 hours including timescales and a schedule of works. In practice, if the issue is complex, it may require the input of specialist and technical staff or external contractors to work up proposals. This timescale seems unduly constrained.

The tight timescales are justified on the basis that reports can be sent to tenants electronically (for example by email) or alternatively by issuing a hard copy depending on the residents preferences. Is it assumed that the inspector would issue the report at the time of the inspection and hand it to the occupier? Or is it proposed that reports will be completed back at the office and hand delivered if the email option is not available? A longer timeframe for a postal option needs to be reflected in the procedures. The 48-hour period also appears to cover weekends which are not currently resourced for this type of administrative activity and reporting.

It is unrealistic to apply these timescales if there are language issues (para 78) and translation services are required.

A more nuanced approach may work better reflecting the type and scale of issue being inspected with timings adjusted to reflect urgency and scale.

Question 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? (Y/N)

Generally, yes but must be some scope for exceptions see Q14.

Question 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? (Y/N)

Yes

Question 13. Do you agree with the proposed interpretation of 'begin' repair works? (Y/N)

Generally, yes – but must be some scope for exceptions see Q14.

Question 14. If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

The 7-day timeframe coincides with existing service standards for most landlords and in the majority of cases we would support it; however, there should be some recognition in the regulations that this will not always be achievable. Whilst the initial inspection may be undertaken quickly, the root cause of many of the issues won't have a quick fix and may require considerable time to set up works contracts etc, raising concerns around the potential for legal action and compensation claims. There needs to be an agreed mechanism for the landlord and resident to vary timescales if mutually agreed and appropriate e.g. the tenant may wish to vary timescales due to personal issues and circumstances.

How will these exception be accessed and avoid recourse to compensation claims under the legislation? An agreed mechanism for this is required to avoid future misunderstandings and disputes.

Question 15. Do you agree that the registered provider must satisfactorily complete repair works within a reasonable time period, and that the resident should be informed of this time period and their needs considered? (Y/N)

Yes

Question 16. If you have answered 'no' to the question in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

Note - There may be cases where the tenant doesn't wish works to commence within the seven-day timeframe – there needs to be some provision for landlord and tenant to agree different arrangements / sign a disclaimer if this is more appropriate. Otherwise, the landlord may be exposed to risk of legal action / compensation claims.

Question 17. Do you agree that timescales for emergency repairs should be set out in legislation? (Y/N)

Yes

Question 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? (Y/N)

Yes

Question 19. If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

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Question 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? (Y/N)

Yes – subject to some reservations.

Question 21. If you have answered 'no' to the question in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)

This will depend on circumstances – Yes, where there is an immediate or imminent risk of harm within the property that cannot be addressed. However, it may not be appropriate in every case and may expose the tenant to different risks if a suitable decant is not available.

Many councils simply do not have properties available to decant people into and the decanting measures set out in the consultation risk adding to the backlog of households placed in hotels as there is no suitable temporary or decant accommodation available. Recourse to hotels is an expensive and unsuitable option, particularly for families, but may be increasingly unavoidable.

Question 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

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

N/A

Question 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? (Y/N)

No

Question 25. If not, please can you provide additional information? (Free text)

The cost assessment is based on the premise that the repair work in question would be required anyway and therefore any financial impact should be minimal /relatively small. However, what is proposed represents a significant speeding up of timescales which will have significant cost / resources implications in some areas.

In addition, the introduction of these measures will raise tenant expectations around repairs, a factor which is already feeding through into higher volumes and costs.

For some councils, the proposed timescales differ from current contractual arrangements with external suppliers. Contracts will therefore need to be re-negotiated with skills and labour shortages further feeding into increased costs.

The proposals on decanting are also a major concern given the escalating cost of temporary accommodation and lack of options in many areas, likely to result in more extensive use of hotel accommodation for extended periods.

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

No

Question 27. If not, please can you provide additional information?

Proposal 2 costs are significantly underestimated:

There is likely to be a significant administrative time requirement associated with the report process especially given the expectation that reports will be tailored to the resident's specific needs.

The assumption that this can be automated in the future is also unlikely to be realistic. If automation is pursued this will also have considerable implementation costs.

The requirement to provide the report within 48 hours of the inspection will introduce additional costs around increasing staffing capacity and out of hours working (where the time period coincides with a weekend).

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

No

Question 29. If not, please can you provide additional information?

The assumptions underpinning the estimates need to be reviewed and further work undertaken to develop a more realistic understanding of the implementation costs of Awaab's Law.