



# National Social Housing Safety & Compliance Week

**21-25 June 2021**

From **ASCP**

In association with





# **Forum: Compliance Access Best Practice Group**

**23 June 21**

**Facilitated by Claire Heyes, CEO ASCP**



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**Golden Lane Housing**  
Housing you can build your life around



## Social Housing Governance – being Accountable





# The (new?) operating environment: tenants as 'consumers' of a housing product - with rights

## Seven themes (rights) in the Social Housing White Paper

1. To be **safe** in your home;
2. To know how your **landlord is performing**;
3. To have your **complaints dealt with promptly and fairly**;
4. **To be treated with respect, backed by a strong consumer regulator for tenants**;
5. To **have your voice heard** by your landlord;
6. To have a **good quality home** and neighbourhood **to live in**;
7. *To be supported to take your first steps to ownership*

**This will mean more and faster enforcement and possibly fines plus public undertakings by Chief Executives and Boards.**



## Housing Ombudsman Published Decisions for 2021

Approach to investigating and determining complaints is to decide **what is fair in all the circumstances of the case.**

In 2021 there were many examples of associations that were failing in the service they said they provided; not following their own policy on complaints.

**Several housing associations appear more than once in the 2021 determinations – and its only June!!!**

The Ombudsman says of all of these – **“the Housing Association failed in its complaint handling and therefore missed an opportunity to improve the landlord/tenant relationship”**



## We got in – but...

Appointment for LGSR given for the afternoon of 24<sup>th</sup> December 2020;

Rearranged for 4<sup>th</sup> Jan 2021 – went ahead;

10<sup>th</sup> Jan 2021 received a letter dated 3<sup>rd</sup> Jan 2021– “you have denied access on several occasions”;

“now issuing Court proceedings”;

“pay Court costs”

Subsequent complaint not responded to within timescales;

Additional issues – personal data breaches.

**A sign of a consumer focussed culture ?**



## Regulator of Social Housing

### **Associations must :**

Treat customers **fairly and with respect**;

Consider how they address the **diverse needs** of different groups;

**Act transparently**;

**Ensure that they are accountable** to their customers for their actions.

**“These are significant responsibilities and how they are delivered speaks to the culture of the provider.” – Regulator of Social Housing**



## Information and Understanding

**PERSONALISED** – Listen and respond to customers' concerns;

Use data and insight to segment customers and plan your work;

Target appropriate actions to the needs of different customer groups;

**COMMUNICATION** - Use infographics in letters, use email with animation, gifs or other comms to raise awareness and understanding;

If you have multi-tenure blocks do not treat leaseholders as if they were aliens!

Provide a clear explanation of why access is needed – in a way customers will recognise what is being said;



## Information and Understanding

**TRUST** – understand where customers are coming from;

Foster positive interactions from day one;

Explore with your customers how they want to receive information;

Be transparent and ensure customer expectations are met;



## Association and Customer Responsibilities

**DELIVERY** – Offer flexible services that work for your customers;  
Have correct monitoring in place to resolve any problems quickly before they grow;

Delivery should always be underpinned by strong engagement;

Deliver the service well;

Manage your contractors – don't let them manage you!

**IMPACT** - understand the impacts that a request for access might have on a particular resident;

Be clear about all impacts of the access process;

Put right any adverse impacts of the visit.



## In Conclusion Be Programme Prepared

**80% of No Access cases can come from 20% of Customers – (Not a Fact) - Pareto Principle**

- Focus on positive effort to understand hard to reach customers;
- Put extra resources in the front end and spend to save;
- Review your compliance programme data from previous years – what's it telling you to do differently?;
- Start work earlier than usual for the 20% - but don't attach labels to customers **(you want them to live in the garden village not the overspill estate!);**
- Review your complaint data for lessons to learn - see where you might have gone wrong and not treated people fairly in the past.

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# Leasehold and Shared Ownership Obligations

23 June 2021

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## Overview

- Tenancy v Lease overview, including Shared Ownership
- Leasehold & Shared Ownership Health and Safety
- Developments on the horizon
- Compliance at any cost?



## Lease Terminology

- “**Lease**” = “tenancy” – not outright ownership
- “**Shared ownership**” is NOT ownership of a “share”
  - S/O = one lease with % £ up front, % £ “pay as you go”
  - Option to increase prepaid element (aka “staircasing”) → reduction in monthly rent

	“Tenancies”	“Leases”
Repairs	LL – Structure & Exterior; supply & use of G/E/H/W T – Decoration	LL – External Structure of flats T – All other repairs

## What about Health & Safety?

- Gas?
- Electricity?
- Fire?



Periodic tenancies (including rollovers) & Fixed term tenancies <7 years – duties

GSIUR Reg. 36?	YES
Landlord & Tenant Act 1985 S.11?	YES
Defective Premises Act 1972 S.4?	YES

## Long leases & shared owners – duties

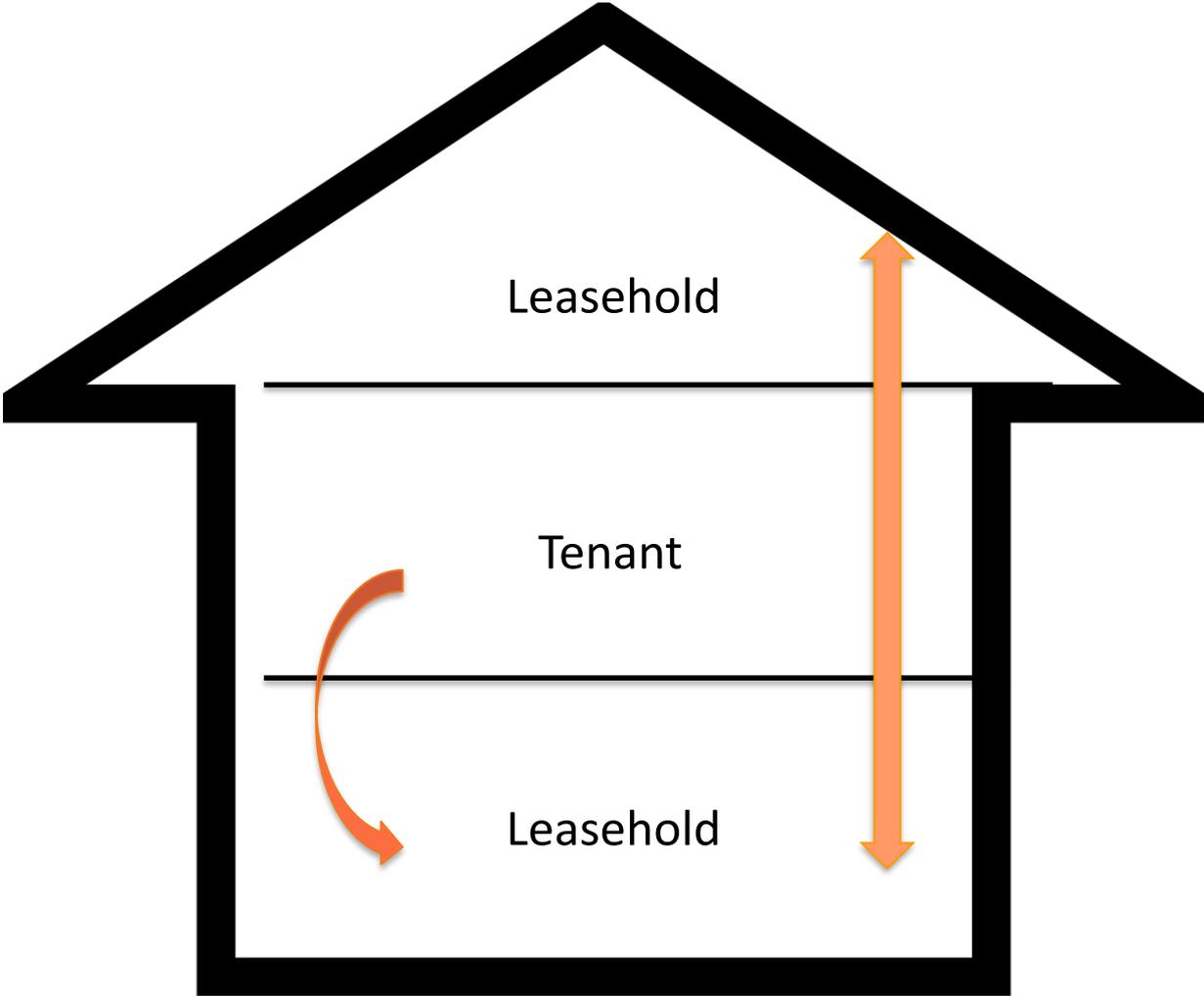
GSIUR Reg. 36?	NO
Landlord & Tenant Act 1985 S.11?	NO
Defective Premises Act 1972 S.4?	Maybe

## Defective Premises Act and long leases

- Section 6: lease ↔ tenancy
- Duty of care re: PI & property damage
  - Section 4(1) – if landlord obliged to repair
  - Section 4(4) – if landlord entitled to repair
- No general duty to inspect, but will turn on the individual facts

## Overlapping duties / mixed tenure

- “Relevant gas fitting”
  - Includes installation pipework directly or indirectly serving relevant premises and installed in any part of landlord’s premises under his control
- Reg. 36(2) duty includes “any flue”

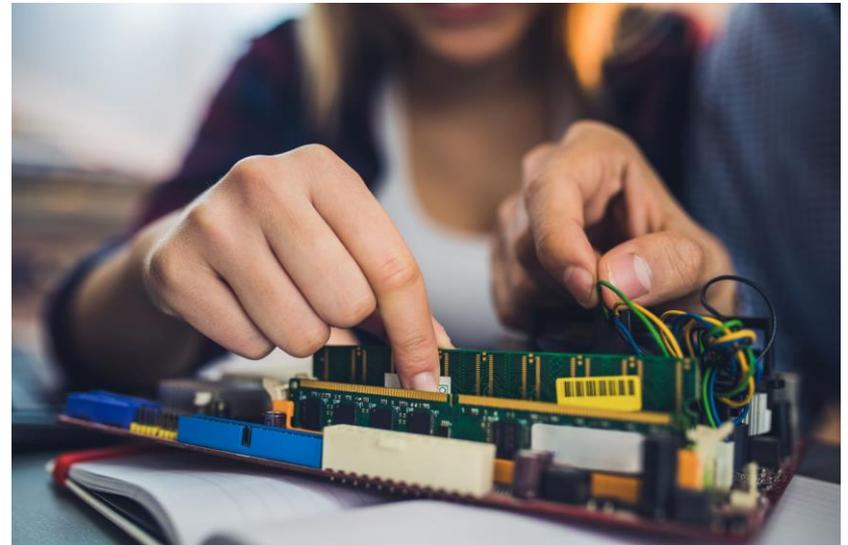


## What about sub-lets?

- Primary Reg.36 duty is owed by leaseholder towards own sub-tenant
- Do your leases require them to comply?

## What about electricity?

- No specific statutory duty for LL of long lease to check electrics inside dwelling
- Overlapping duties under Fire Safety



## Fire Safety

- Regulatory Reform (Fire Safety) Order 2005
- Duty to assess and manage risks
- LL responsible for Building; leaseholders for interiors of residential flats



## Fire Safety

- Grey areas on some common parts e.g. front doors – Fire Safety Act 2021 clarifies this – section 1 not yet in force
- Further duties proposed under Building Safety Bill



## Consultation on New Model Shared Ownership

- 10 year “repair-free” period on new builds
- Shared owners to repair interior but reclaim costs from LL where not covered by new build guarantee
- LL to undertake structural repairs for flats; but shared owner for houses in some cases
- Shared owners still responsible for internal H&S requirements

## Compliance at any cost?

- Reg. 36 duties
- Reg. 39 defence – *“No person shall be guilty of an offence by reason of contravention [...] in any case in which he can show that he took all reasonable steps to prevent that contravention.”*



- “Contravention” does not automatically mean “offence”

## Compliance at any cost?

- Q: Is it “reasonable” to break one law to comply with another, when there is a lawful alternative?
  - Unauthorised entry (Trespass; Covenant of Quiet Enjoyment)
  - Capping off (Landlord and Tenant Act 1985; Protection From Eviction Act 1977)
  - Mental health issues (Equality Act 2010)
- RSH – “*Governance arrangements shall ensure registered providers: (a) adhere to all relevant law*”

## What is “compliance” anyway?



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# THE CHALLENGES OF MANAGING HEALTH & SAFETY IN LEASEHOLD TENURES

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# WHAT IS LEASEHOLD

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- Leaseholders have the right to occupy and use a flat or house and to share the use of other areas of the building or estate for a given number of years
- The lease is the written contract between the freeholder and the leaseholder, giving the leaseholder the right to live in and use the property. The terms of the lease are set out as the rights and obligations between the freeholder and leaseholder.
- The challenge is the number of different leases to manage .....



# LEASEHOLDERS – WHO ARE THEY?

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- Tenants who buy their homes through a variety of options
- Right To Buy (RTB)
- Right to Acquire (RTA)
- Leasehold Resales
- Shared owners who've purchased 100% of their shares
- Purchase on the open market as primary home
- Purchase on the open market as a Buy to Let

# WHAT IS SHARED OWNERSHIP

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- Shared ownership gives first time buyers and those who don't own their own home the opportunity to purchase a share in a new build or resale property.
- Shared owners will usually pay a mortgage on the share they own and pay rent on the remaining share to a Housing Association. This means that a lower deposit is required than if they are buying a property outright.
- The rent is less than the rate charged on the open market (usually around 2.75% of the property value pa)

# SHARED OWNERSHIP RESIDENTS – WHO ARE THEY?

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- To be eligible for shared ownership both at newbuild and then resale they need to meet the following criteria:
- at least 18 years old
- Annual household income must be less than £80K (outside London) and less than £90K (London)
- Usually a first time buyer but if they already own a home they must be in the process of selling it.
- Shouldn't be able to afford to buy a suitable home on the open market



# COMMON THEMES

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- A lease is the contract which sets out the Rights & Obligations
- Service charges are payable for communal/estate wide charges
- Fee's payable for permissions such as making improvements, pets ....
- Inside their home 100% of repairs, maintenance and servicing are the residents responsibility (even if a shared owner owns less than 100%)
- Shared Owners and Leaseholders often haven't had their leases explained to them so may be unclear on their responsibilities

# CHALLENGES FOR MANAGING LEASEHOLD

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- Not one standard lease
- Internal systems are setup for rented homes
- Challenges over service charge costs
- Lease & Leasehold legislation covers what can be charged, reasonableness and quality
- EWSI forms – cladding issues
- Section 20 Consultation
- First Tier Tribunal will hear disputes

# THE CAN OF WORMS

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# SAFETY OF LEASEHOLD HOMES

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- Due diligence on H & S checks:
  - Gas Safety
  - Electrical works
  - Fire doors – Fire Safety Act 2021 once implemented will resolve this issue
  - Improvement works
  - Compartmentation issues
  - Leaseholders as Landlords ...

# BUILDING SAFETY – A CHANGING WORLD

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- Resident involvement strategy
- Fire safety strategy's
- PEEPs
- The changing role of home:
  - Places to work
  - Places to play
  - Places to exercise

# YOUR VALUABLE INPUT

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- Does your Organisation keep H & S records for Leaseholders/Shared owners?
- Does your Organisation offer Leaseholders and Shared Owners access to their Maintenance and Servicing services?
- Sharing good practice
- If your Organisation uses any specific systems/technology to monitor H & S could you add this in 'chat'? It may be useful for others who're interested in exploring these options.

# THANK YOU

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- Useful agencies

- Leasehold Advisory Service: [www.lease-advice.org](http://www.lease-advice.org)
- Institute for Residential Property Management (IRPM) – [www.irpm.org.uk](http://www.irpm.org.uk)
- Association of Residential Managing Agents (ARMA) – [www.arma.org.uk](http://www.arma.org.uk)
- Your inhouse Home Ownership/Leasehold teams
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