The Private sector EHP – enforcement perspectives and the role of the ‘expert witness’

‘Parallel universes’
'any person who by qualification or experience is accepted by the Court as competent to adduce evidence of opinion'

In other words ..........

All of us

Patel-v-Mehtab (1982) 5 HLR 78 QBD
Public sector

- Public law
- Housing Acts
  - Salford Council v McNally [1976] AC 379
- Cardiff City Council v Cross (1982) 6 HLR 1 CA
- Judicial Review
Private sector

- Private law
- Tort
  Nuisance S82 EPA 1990
  Negligence S4 DPA

- Contract
  S11 LTA 1985
  UCTA 1978
  Supply Goods Services Act
  Disability Discrimination Act

*Judicial Review*********Public law
S.99 PHA 1936/ S82 EPA 1990

- Coventry v Cartwright [1975] 1 WLR 845
  S99(1)© ‘accumulation or deposit’ held to be actionable only if capable of causing disease
GLC v London Borough of Tower Hamlets (1984) 15 HLR 54

• ‘where properties are, by design, exceptionally difficult to heat at reasonable cost, the landlord is obliged to apply his mind to issues of heating, insulation and ventilation’
• Birmingham City Council v Kelly & others (1985) 17 HLR 572

Magistrates entitled to order ‘works necessary to abate nuisance’………. no limitation on Court if satisfied necessary
S. 35 powers of Criminal Courts Act 1973

Herbert v Lambeth (1991) 24 HLR 299

Davenport v Walsall (1995) 28 HLR 754
Costs

• British waterways Board v Norman (1993) 26 HLR 232

• Hughes v Kingston-upon-Hull [1999] 2 All ER 49

• Taylor v Walsall & District PICL (1998) 30 HLR 1062
R v Bristol City Council  ex p. Everett [1999] 1 WLR 92

Birmingham City Council v Oakley
Contractual remedies

- S.11 LTA
- Quick v Taff Ely BC (1986) QB 809

*Disrepair*

*Rent levels for S8 claim*

*Inherent deficiencies*

*Condensation cases*

Dover DC v Farrer (1982)
McDougal v Easington DC (1989) 21 HLR 310

- (i) whether the alterations went to the whole or substantially the whole of the structure or only a subsidiary part
- (ii) whether the effect of the alterations was to produce a building of a wholly different character
- (iii) what was the cost of the works in relation to the previous value and their effect on the value and lifespan of the building

- Mustill LJ
Civil Procedure Rules

• Small Claims procedure

• Fast Track

• Multi-track

Active case management
‘overriding objective’
Pre-action protocols

Disrepair protocol
Possession proceedings protocol

Part 35 Civil PR...... duties of experts
Criminal Procedure rules
‘Party expert’

‘Icarian Reefer’
Prof. Meadows

Joint expert

Single joint expert
Damages for Disrepair

• Wallace v Manchester CC (1998) 30 HLR 111 CA
TORT

Hill v Chief Constable West Yorkshire [1988] 2 All ER 238

Allcock v Chief Constable of South Yorkshire [1992] 4 All ER 907

X and others v Bedfordshire County Council [1995] 3 All ER 353

Duty of care in negligence claims

Operational v policy decisions

Exclusion of liability on ‘public policy’ grounds
‘duty of care’

• Were consequences of behaviour reasonably foreseeable?

• Was there a sufficient relationship of proximity?

• Is it fair, just and reasonable for the Court to impose a duty?
Section 4 Defective Premises Act 1972

- Personal injury claims
- Respiratory ill-health
- Asthma in children

Damages ‘for inconvenience’
Human Rights Act 1998 and ECHR

Public bodies............... ‘functional’, non-exhaustive......... Includes Courts

Statement of compatibility

Common law ?
Article 13 ECHR

• ‘everyone whose rights and freedoms………. are violated shall have an effective remedy before a national authority….’

• Osman v UK [1998] EHRR 245
• Z v UK [2001] 2 FLR 612
• Hatton v UK 92001) 11 BHRC (A8 claim)
A8 ECHR

- ‘right to respect for private and family life, his home and correspondence’
- Qualified right, permissible if the interference is:
  - ‘in accordance with law’
  - ‘necessary in a democratic society’
  - ‘proportional to the objective’
Leeds v Price
Harrow LBC v Qazi
Connors v UK

McCann v UK [2008]

Doherty v Birmingham City Council (pending HL)
A8……… the future ?

• Retaliatory evictions

………. necessary in a democratic society ?….. Proportional ?

Sound Insulation & nuisance………. Baxter v Camden….. A8 & A13 ?

RPT…. Rights of tenants ? HHSRS ? Adjusting the harm outcomes
Medical Issues

Exposure to house dust mite allergen (Der p I) and the development of asthma in childhood……a prospective study
Sporik et al
New England Journal of Medicine 1990

‘…….high levels of exposure to inhaled allergens at an early age are important in the development of asthma. When the present results are combined with those of previous studies showing an association of asthma with sensitisation to house dust mite allergen, of the onset of asthma with exposure, and of improvement of the disease with avoidance, there seems sufficient evidence to suggest a causal relationship between exposure to house dust mites and asthma,

Epidemiology of the Relationship between exposure to Indoor Allergens and Asthma

Platt-Mills et al

‘…..the evidence we have suggests that dust mite exposure….is worldwide the single most important factor in the development of bronchial reactivity. Furthermore, there is now a wide range of evidence that sensitisation and the development of asthma are more likely to occur among individuals exposed to >2ng group I mite allergen per gram of house dust. At this point the evidence that indoor allergen exposure is a major cause of asthma among children and adults is so strong that it takes a very warped mind to ignore it

Sensitisation to airborne moulds and severity of asthma: cross sectional study from European Community respiratory health survey
Zureik et al
National Institute of Health and Medical Research 2002