

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’

Bridgnor h House

1125 280

Handwritten graffiti on the beige wall.



•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

Caparo v Dickman [1990] 1 All ER 568

‘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 (2001) 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

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_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

Int. Arch. Appl. Immunol. 1991;94:339-345

‘.....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 >2qg 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