

A person in a dark suit and light purple shirt is holding a small, colorful toy house in their hand. The house is white with blue and pink accents. The background is blurred, showing a desk with a notebook and a pen.

The National HMO Network

WINTER CONFERENCE
Nov 2022

Robin Stewart

Anthony Gold Solicitors LLP



Robin is a senior associate at Anthony Gold. He specialises in property litigation, especially landlord and tenant disputes, and the regulatory law relating to rented property.

Robin's practice involves acting for landlords, tenants, property professionals, homeowners and businesses. He enjoys using specialist expertise to help a wide range of different types of client; he believes that it is vital that every client has access to quality advice and, when necessary, a robust advocate.

Robin also advises property agents on consumer law and trading standards and advises property professionals with updating their terms of business and tenancy agreements. When creating terms of business and updating tenancy agreements for agents he takes a meticulous but flexible approach, conscious that every business has its own culture and priorities.

Robin often acts in tribunal appeals, including appeals against improvement notices and prohibition orders, rent repayment order cases, and financial penalties under housing and consumer rights legislation. He also acts for businesses, company directors and private landlords in regulatory cases in the criminal courts. He is compassionate, non-judgemental, and focused on getting results.

General legal roundup relating to HMO's

Robin Stewart

Legal Roundup

- Inquest into the death of Awaab Ishak
- Grenfell Inquiry and Building Safety Act
- ‘Norwich Pharmacal’ order against AirBnB
- Important eviction & possession cases in court this year
- Current law on section 21 notices
- Renters Reform Bill – lawyer’s perspective
- HMO trends: planning permission and licensing
- HMO trends: crime and punishment
- HMO trends: scams and subletting

Awaab Ishak



Awaab Ishak: Coroner's Findings

- Mould began developing in 2017 and reported to landlord. Tenant told to paint over it but not told to use anti mould treatment / paint.
- Solicitors instructed and wrote to landlord in June 2020. Landlord had a policy not to undertake repair work after legal claim made until there was agreement from the claimant's solicitors. Solicitors did not pursue claim.
- Health visitor raised concerns about mould in letter to landlord in July 2020.
- Inspection in July 2020. Landlord found no evidence of damp or leak. Landlord failed to identify the lack of an adequate ventilation system as a factor in the presence of the mould. "Too much emphasis was placed on the cause of mould being due to parent's lifestyle".
- December 2020: Awaab suffers shortness of breath, taken to UCC and then admitted to hospital on 19th. Discharged following diagnosis of croup. Awaab deteriorated the following day and died in hospital on the 20th. Cause of death was a severe respiratory condition caused due to prolonged exposure to mould in his home environment.

Inquest into the death of Awaab Ishaak

- Coroner: “The tragic death of Awaab will and should be a defining moment for the housing sector in terms of increasing knowledge, increasing awareness and a deepening of understanding surrounding the issue of damp and mould.”

Grenfell Inquiry

- Hearings concluded last week
- Phase 2 report of inquiry chair Sir Martin Moore-Bick being written
- Counsel to the Inquiry: “Each and every one of the deaths that occurred in Grenfell Tower, on the 14 June 2017 was avoidable.”
- Criminal prosecutions may now proceed



Building Safety Act 2022

- New duties for 'accountable person'
- Some cost protection for leaseholders
- Building Safety Regulator
- Limitation period on claims by homeowners relaxed



Disclosure AirBnB Data to Council

- Order for disclosure of information made on application of Kensington & Chelsea (with consent of AirBnB)
- Order made against AirBnB Payments UK to enables RBKC to access certain payments data held by AirbnB. AirBnB to disclose:
 - name of the host account holder and address of each associated property
 - the payment and transaction history for each of the properties within the two blocks which are let to social housing tenants.
- RBKC will use the data to identify cases of illegal sub-letting of social housing.



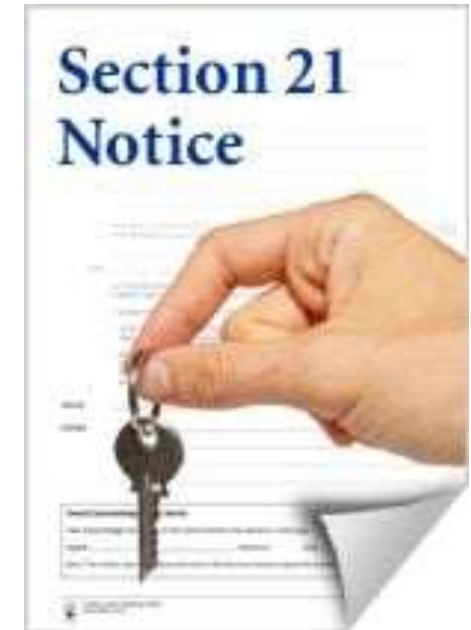
Eviction & possession cases in court this year

- Northwood Solihull v Fearn & Ors
 - Authorised person may sign deposit certificates and notices seeking possession on behalf of landlords
- Trecarrell House v Rouncefield – not proceeding to Supreme Court
 - Late compliance with providing pre-occupation GSC not a barrier to serving a section 21 notice
- Byrne v Harwood-Delgado
 - Appeal on the issue of whether the absence of a GSC at the start of the tenancy prevented any subsequent service of a s.21 notice. HHJ Bloom ruled that this did prevent a section 21 notice being served by landlord later.
 - Circuit Judge decision – not binding on other judges but persuasive



Popular challenges to Section 21 Notice

- Defects in GSCs being challenged
- No original GSR
- Wrong version of How to Rent guide provided
- Status of Easy Read version
- How to Rent Guide provided by email only
- Deposit exceeds Tenant Fees Act cap



Renters Reform Bill: Lawyer's Perspective

- Abolition of section 21 notices
 - Detail of amended grounds for possession key
 - What sort of evidence required to prove new grounds?
 - Landlord's prospects of success at first hearing without section 21 notice will become key tactical consideration
 - Costs risk for tenants who defend cases
 - Avoiding intentional homelessness without section 21 notices

Renters Reform Bill: Lawyer's Perspective

- Expansion of RROs to effectively replace disrepair claims?
- How to fund representation for vulnerable tenants under this model
- Pros and cons to 'consumer-focussed' approach to property standards
- Government appears very keen to have a debate with Labour about rent control – good politics?

Smoke and Carbon Monoxide Regulations

- Landlord must ensure a carbon monoxide alarm is equipped in any room used as living accommodation which contains a fixed combustion appliance (excluding gas cookers).
- Now a statutory obligation to repair or replace faulty alarms.
- Mandatory licence condition to the same effect for licenced HMOs



Tenant Fees Act – reasonable fees

- Not clear what fees are allowable in case of variation / novation / assignment of tenancies or early termination of tenancy at tenant's request.
- Tenants have been allowed by Tribunal to pay (to escape tenancy) and then challenge later, even after signing deed of surrender
- Some judges have said £50 should be sufficient in most cases
- Other judges assessing the reasonableness of charges in more traditional way



HMO trends – Planning Permission & Licensing

- What is the relationship between planning control and property licensing?
- Requirement to have planning permission to apply for a licence is dubious practice at best



HMO trends: crime and punishment

- RRO litigation not slowing down. More and more applications being made, including group applications.
- Property guardians and student accommodation providers are attractive target
- Rakusen v Jepson in the Supreme Court next year
- How much should low/medium culpability landlords be required to pay? What is a 25% case?
- Reasonable excuse where council gives bad advice
- Reasonable excuse where agent gives bad advice



HMO trends: scams and subletting

- Liability for 'superior landlords':
 - Fines can be imposed on 'person having control'
 - If 'subtenant' is acting as agent for undisclosed principal, RROs and fines
- Property Redress Scheme Annual Report (2022) said that the Rent to Rent business model had been exposed as a weak business model by the Covid19 pandemic.
- High profile R2R operators went bust or prosecuted for fraud
- Reports of fraud being rife in lower end of HMO market



Questions

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Closing Remarks

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