

Raising Damp and Breaking Mould

Mould growth in the home can cause acute health effects, but dealing with the problem using statutory nuisance provisions is not always straightforward. Dan Preece and David Clapham show a path through the legal minefield of the EPA

The Environmental Protection Act 1990 (EPA) defines statutory nuisances. This involves particular categories such as noise, accumulations and premises. Any premises that are in such a condition as to be prejudicial to health or a nuisance are therefore statutory nuisances. When considering domestic premises however, it has been held that they can only be a statutory nuisance to the occupiers if they are prejudicial to health.(1) Whether a particular premises is a statutory nuisance because it is prejudicial to health is a matter of fact, determined by the courts.

When deciding whether something is a statutory nuisance through its being prejudicial to health, EHOs analyse the text in the act; previous legal cases and published research. This process mirrors the approach of the courts, as it should. The central element in making a decision can only be: is the condition of the premises detrimental to the health of any people in them? No other parameters are relevant.

The text of the act defines "prejudicial to health" as "injurious, or likely to cause injury to health." This phrase "injurious to health" has been used consistently in public health since the Public Health Act 1875. Case law is therefore neither ossified nor neglected, but it is extensive. It is authoritative with regard to the EPA (the act replaced sections of the Public Health Act 1936) and there are definitive interpretations on general concepts and specific conditions.

As far as general concepts are concerned, threat to health has been defined as a "threat of disease, vermin or the like". If conditions only present a risk of accident they cannot amount to a statutory nuisance. This is because they present a risk to safety as opposed to health. This was first established in *Coventry City Council v Cartwright* (1975) and supported in *R v Bristol City Council* (1998).

Specific cases have defined premises with mould growth to internal surfaces as being a statutory nuisance because of their adverse health effects.(2) This case reiterated widely accepted research on chronic and acute health effects following inhalation of mould spores.(3)

Many EHOs have been involved in deciding whether mould growth in social housing is a statutory nuisance. This has normally followed action by the tenant against a local authority under section 82 of the EPA. Indeed, the most common cause of statutory nuisance in premises is mould growth to internal surfaces, caused by condensation. The process of condensation is not a complex one - water vapour in the air becomes liquid on cooler adjacent surfaces. The temperature of the air and the surface and the amount of water vapour present in the air all affect the process. Where condensation occurs for significant periods, mould is likely to grow. Published research(4) supports the contention that where premises have significant mould growth to internal surfaces at a level where airborne spores are likely to be inhaled, the premises is a statutory nuisance. To abate the nuisance, the mould has to be removed and steps taken to prevent regrowth.

While the process of condensation is relatively simple, the factors influencing it are many. These include inputs of heating and moisture, outputs of heating (affected by the insulation capacity of the external fabric and surface) and moisture (affected by ventilation). These factors can be grouped by who is responsible for them: those which are linked to the use of the premises (ie actions of the occupants) and those which are linked to the condition and nature of appliances and fabric of the building (ie landlord's responsibility). The EPA defines the person responsible for a statutory nuisance as the person by whose act, default or sufferance the statutory nuisance has arisen. In simple terms, this means that the person whose actions or failure to act caused the statutory nuisance.

LANDLORD RESPONSIBILITIES

To discharge his duty under the act, a landlord needs to abate the statutory nuisance and take reasonable action to prevent the same problem in the future, given reasonable actions by the occupant. A landlord may show that he is not the person responsible however, because he has already taken reasonable action to prevent condensation and the statutory nuisance has arisen solely from the actions of the tenant, and their use of the premises.



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Many additional standards are applied to buildings and this may lead to confusion as far as nuisance law is concerned. These include the fitness standard and associated guidance, the British Standards and Building Regulations. Failure to meet the requirements and recommendations included in these statutory and non-statutory standards does not automatically cause conditions adverse to health. They therefore cannot determine whether a statutory nuisance is present. The link between a premises and a statutory nuisance can only be decided by calculating the health implications of the conditions that are present. None of the standards referred to above are mentioned in the act and none are directly related to being injurious to health.

An accurate assessment of the health implications must be based on scientific knowledge and a thorough analysis of the conditions. There are, for example, both chronic and acute effects of inhalation of mould spores with regard to asthma. A premises which has mould growth to internal surfaces above a minimal level is therefore likely to be a statutory nuisance. The complex relationship between asthma and inhalation of spores means that it is not possible to provide an accurate prediction of the levels of mould which will result in development of the condition in every case. Each case must be individually assessed, matching the conditions present against the health of the tenant.

Some standards, although not directly applicable to statutory nuisance, are linked to the conditions that cause condensation. This is because of their effect on internal relative humidity. Relative humidity should be maintained below 65 per cent to prevent condensation-associated mould growth. Compliance with the relevant standards may ensure relative humidity is kept below 65 per cent and thus will prevent the development of mould growth.

Mould growth may also occur because of unreasonable occupation - in this context increasing the moisture content of the air-making condensation more likely. Examples include: over-occupation, unflued appliances that produce moisture vapour or failure to use heaters/ventilation. Sometimes these conditions can be directly attributable to the building or the landlord's activities - such as inadequate provision of heaters or types of window that discourage use for ventilation. However, if the occupier is at fault then he will be the person responsible for the nuisance.

Remedial works should deal with the original cause of the statutory nuisance. Where, for example, a premises exhibits cold-spot condensation on internal surfaces, measures to improve insulation will prevent further problems. If mould growth is restricted to window frames in an unventilated bathroom, additional ventilation should be considered.

We have found there is no benefit in applying standards hoping that they will cure the problem. There is no universal solution to condensation or mould growth and standards should not be blindly applied in place of professional competence and decision-making. Their main use is to assist in preventing continued condensation problems after the statutory nuisance has been abated. They also help to confirm that a premises has had sufficient works carried out.

Action will need to be taken to prevent excessive mould growth and condensation (see boxes, page 423). The standards are not directly mentioned under the EPA, they cannot therefore, be insisted upon by tenants under threat of court action against social landlords. Failure to meet them does not mean liability under the act. The outcome achieved is the important factor. Thus, if premises are rendered no longer injurious to health, they can no longer be a statutory nuisance.

There is an important distinction to be made between conditions that are prejudicial to health and those where a statutory nuisance is likely to recur. Risk to health arises via mould spores. Removal of the mould abates the statutory nuisance. Provision of measures to prevent the condensation represents action to prevent recurrence of the statutory nuisance. This is relevant to a social landlord's liability created by section 80 and 82 of the EPA 1990.

Use of the guidance may provide evidence that reasonable action has been taken as long as it applies to the cause of the nuisance. It is important to remember, however, that the standards are not solely based on considerations of the health of the occupants. Failure to comply does not mean that the premises are prejudicial to health. None of them are solely restricted to consideration of health and include other factors such as a 30-year life for the premises, detailed analysis of the building materials, best practice and standards for new buildings. As has been stated: "In dealing with each act, it is better to use its own terminology."95)

Conclusion

Statutory nuisance in domestic premises is defined by the effect on health. While many conditions can exist which are detrimental to health, this article only deals with mould growth. The concepts discussed therefore, can apply to other health-related conditions. None of the standards which apply to domestic premises have been written solely to remove deleterious health effects from occupiers. They can determine works to a building to protect its internal environmental condition but they are largely irrelevant in determining the conditions that affect health. It is important to remember that failure to meet the standards for domestic

premises is not, in itself, relevant to statutory nuisance, except when failure results in a threat to health.

The current system of statutory enforcement in housing creates a potential anomaly. While the health-based standard of the EPA is the only enforceable standard for social housing; private sector housing is subject to wider concepts of the Housing Act 1985 fitness standard. This two-tier system matches the situation where social housing is in a generally better condition with regard to fitness than the private-rented sector and has a more sophisticated system for repairs. Liability under the EPA for social landlords should act as a safety net for the minority of cases where a tenant's health remains at risk after complaints to the landlord.

Local authorities and other social landlords have an opportunity to target action on the health of the occupiers. This focused, discriminatory approach, in favour of health, means that priorities can be set which ensure legal requirements are met and provide the absolute basic requirements for landlords. This approach binds together the often divergent concepts of legal liability and effect on health.

References

1. Coal Board v Thorn, 1976
2. Patel v Methab, 1980
3. Eg CIEH Practice Notes: Condensation, 1998
4. Custovic A, Chapman MD, "Indoor Allergens as a risk factor for asthma." Asthma. Chapter 8 pp 1-21. Lippincott- Raven Publishers. Philadelphia 1997.
5. Lord Wilberforce in Salford City Council v McNally, 1975

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