Ode to the Management of Houses in Multiple Occupancy (England) Regulations 2006

I represent many individuals for breaching of the Management of Houses in Multiple Occupancy (England) Regulations 2006 in the courts. Breaches of the Regulations are normally tacked onto more substantive Housing Act 2004 breaches by Local Authorities such as failing to licence an HMO. The Regulations, although widely drafted, contain some esoteric drafting anomalies. Interestingly, there are no cases as yet on the meaning of any of the individual Regulations and some of its more tortuous language.

Most importantly, the Regulations themselves are not absolute or strict liability offences. The mere fact that the fire alarm has not been "maintained in good working order" (reg. 4(2)) to give one example is insufficient to make the HMO manager liable as section 234(4) of the Housing Acts imports a "reasonable excuse" defence for all the various management duties . Of course, if the manager simply allows the fire alarm to break down through neglect then he is guilty of the offence but if it is maintained and simply breaks down due to an unforeseen issue such as tenant spilling a glass of Pol Roger over it then the reasonable excuse argument (and the fact that is has been "maintained") are in contention and afford a defence.

The Regulations, although not affording specific defences to managers, also make it plain in regulation 10 that occupiers of HMO's must be careful when living in the HMO so as to avoid damaging items, littering or under paragraph 10(a) conducting himself "in a way that will not hinder or frustrate the manager in the performance of his duties". How anyone, bar a Trappist monk perhaps, could live to this standard throughout his entire tenure I know not.

The Regulations, as well as leaving the section 234 defence, should have set up specific defences under regulation 10 so that if an occupier does hinder a manager or does damage items that the manager must supply or maintain such behaviour can amount to a substantive defence rather than leaving it to the vagaries only of the section 234 defence (or at least be part of the factors or some checklist that the court can take into account in deciding whether a section 234 defence is made out). A breach by an occupier of regulation 10 is in itself an offence although one cannot imagine many tenants being prosecuted for these offences. (No doubt their pockets are not as deep as a landlord's).

Regulation 11 suggests that the duties in the Regulations to look after and repair the property are in themselves something of a moveable feast. There was no need for regulation 11 for this regime to function but we have this wonder inserted anyway. The regulation reads that the duties to maintain or keep in repair the property are a standard of maintenance that is reasonable in the circumstances. The draftsman, perhaps channelling their internal interior designer, has even spells out that repairs must take into account "the age, character and prospective life of the house and the locality in which it is situated". This line suggests that the poorer the area the less you need to worry about repairs when it comes to the standards of repairs – locality is very deliberately mentioned. Farrow and Ball in Chelsea but spit and

sawdust in Poplar I assume are reasonable for the drafters in an HMO when it comes to the standards of HMO maintenance.

Another paragraph that strikes the reader is paragraph 7(4)(b). This imposes a legal obligation punishable by criminal proceedings to keep gardens in a "safe and tidy condition". Of course, if we read this in conjunction with paragraph 11 we have to ask ourselves how does a tidy condition in Chelsea differ from a tidy condition in Newham? This sort of technocratic micromanaging raises many more questions than it answers. We do not even have the word "reasonable" imported before "tidy". Perhaps the draftsman just wants all HMO gardens to be crazy paved with handrails. Those would truly be safe and (very) tidy. Perhaps the draftsman was inspired by Gardener's Question Time and decided that a "safe" garden (which should be good enough) also had to be "tidy".

One of the most common allegations is a breach of Regulation 7(1)(a) – that the common parts must be "maintained in good and clean decorative repair". Again, there is a reasonable excuse defence and paragraph 11 would suggest (with the word "repair" repeated in regulation 7(1)(a)) that the standards of repair should relate to the area the property is in which seems unfair in punishing HMO dwellers in poorer areas. The regulation doesn't does state that the common parts need to be in reasonable repair or "clean" but that they also need to be in "good" repair. These are not opt-in burdens for landlords but mandatory – merely doing a quick fix job won't do. Repairs need to be "good".

All the common parts of the HMO must be "kept reasonably clear from obstruction" in paragraph 7(1)(c). Again, this is subject to paragraph 11. Is blocking the hallway with the manager's bicycle a breach of the section? How does a manager police the property from the debris and stuff that HMO's will invariably accumulate?

It is worth reading the Regulations in their full technicolour glory to see the powers afforded to Local Authorities in deciding which vaguer then vague breach to charge a landlord with.

These are difficult and complex regulations once examined in detail. A specialist in this area should be instructed, not a general criminal lawyer which will invariably lead to tears and with any appropriate expert instructed at an early stage.

Julian Hunt

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