

Support and Management Division
Jonas Widell
jonas.widell@ivo.se

Statens haverikommission
investigations@havkom.se

This document is a translation made by SHK of the original response in Swedish to the safety recommendation. In case of discrepancies between this translation and the Swedish original text, the Swedish text shall prevail in the interpretation of the response.

Statement of opinion concerning Report RO2015:01, Fire at Textes HVB-hem in Norrtälje (Ref. no. O-09/13)

The Swedish Accident Investigation Authority (SHK) has submitted a report (RO 2015:01) concerning a fire at Textes HVB-hem on 27 August 2013 in Norrtälje, Stockholm County.

SHK draws the Health and Social Care Inspectorate's (IVO) attention to the fact that the report contains one recommendation addressed to IVO and that it anticipates notice of the measures that have been taken with reference to this recommendation.

The recommendation to IVO

IVO is recommended to develop procedures to ensure that the facilities are deemed safe, also from a fire safety perspective, when authorising and supervising HVB homes.

IVO's views with reference to the recommendation

What do the regulations say?

IVO exercises supervision of social services. Supervision of private activities includes activities requiring a permit under Chapter 7, Section 1 of the Social Services Act (SoL). This is stated in Chapter 13, Section 1 SoL.

According to Chapter 13, Section 2 SoL, supervision entails checking that the activities fulfil requirements and objectives in accordance with laws and other regulations and with decisions issued by virtue of such regulations.

According to Chapter 3, Section 3 SoL, social services interventions are to be of good quality. Social services tasks are to be carried out by staff with the appropriate training and experience. The quality of activities is to be systematically and continuously developed and assured.

The preparatory works (Government Bill 1996/97:124 p. 52 f.) to this provision state, *inter alia*, the following.

The requirement of good quality is to apply both to private and public social services activities and to the exercise of public authority and other interventions. ---

The Government --- is able --- to establish that it is difficult to assess and define quality in the various activities of the social services. Quality is an elusive concept, and what constitutes good quality is not ascertained in an unequivocal and objective manner. ---

The Social Services Committee argues that even if the knowledge of what is meant by quality in social services is hitherto limited, we know that certain factors are of great importance to activities being said to have good quality. Among other things, social services interventions are to be provided in accordance with the objectives and other provisions stated in law, and in such a way that the individual's need for support and assistance is satisfied and the purpose of the intervention or activity achieved. This requires staff with the appropriate training and experience, and an approach to those needing assistance that leads them to experience a sense of security in their encounter with social services and in the care provided.

In the Government's assessment, achieving good quality in the social services requires a series of ingredients such as legal security, the empowerment of individuals and readily accessible care and service. A well-functioning labour management and appropriate team composition are other factors that can provide conditions for good quality. The social services' use of a well-planned working method is a part of that quality, and this underlines the need for the monitoring and evaluation of various interventions.

In this context, the Government wishes to pay particular attention to issues regarding the personal treatment of individuals by the social services. A considerable part of the interventions carried out within the social services' individual and family care aims to support a change in the individual's life situation. The core of this social work is the actual work with the client, primarily that which takes place in the encounter between social worker and client. For this reason, a relationship of confidence between the individual and social services staff and respect for the individual's personal integrity are of great importance for quality. It is essential that the social services display sensitivity and empathy towards the circumstances of individuals and that individuals enjoy transparency and real influence over the interventions provided. As regards social benefits, the assessment of individual needs calls for the assessment to be done in such a way that the individual feels that his or her case has been judged objectively and correctly in accordance with the applicable legislation.

These attempts to define what is good quality within the social services lead to the conclusion that quality development should be focused on all parts of the activities. This applies just as much to organisational structure and work process as the results achieved.

Some private activities, such as care or residential homes, require a permit from IVO (Chapter 7, Section 1 SoL). A permit may only be granted if the activities fulfil the requirements for good quality and safety (Chapter 7, Section 2 SoL).

The concept of “good quality and safety” has not been more specifically defined in the Social Services Act. The preparatory works (SOU 1994:139 and Government Bill 1996/97:124) include the following. A permit may only be granted if the activities fulfil the requirements for good quality and safety. Certain factors in the assessment of activities subject to a permit are of fundamental importance. These include the party superintending the activities having appropriate training, previous experience and documented personal suitability. It should also be possible to place requirements on premises and equipment to be fit for purpose. This does not relieve the applicant of the responsibility for ensuring that bodies such as the emergency services, the Labour Inspectorate (now the Swedish Work Environment Authority) and the Environment and Public Health Committee inspect the prospective premises on the basis of applicable regulations in the respective areas.

An application to IVO for a permit referred to in Chapter 7, Section 1, first paragraph SoL to operate private activities is to be in writing and contain certain, more detailed information. Among other documentation, drawings of the activities' premises and information on how fire protection is arranged are to be appended to the application. This is stated in Chapter 4, Section 1 of the Social Services Ordinance (SoF).

Provisions concerning an application for a permit to operate activities in the form of a care or residential home are also found in Chapter 6 of the National Board of Health and Welfare's regulations and general advice (SOSFS 2003:20) on care or residential homes. Chapter 6, Section 6 states the following:

According to Chapter 4, Section 1, second paragraph of the Social Services Ordinance (2001:937), drawings of the activities' premises and information on how fire protection is arranged are to be appended to the application. The drawings must be to scale. The application is always to include

- *information on the use of the premises,*
- *information on contacts made with the Building Committee or equivalent, and*
- *information on contacts made with the Environment and Public Health Committee or equivalent.*

There are no preparatory works to these provisions, and the question of how they are intended to be applied has not, as far as IVO is aware, been discussed in any legal sources. As SHK has stated, the requirement for information on how fire protection is arranged can probably be traced back to the previously applicable statute (1970:88) on private care homes etc. (the care homes statute). Section 7 stated that a private care home may not be run without a permit and that the application documents must contain information on, inter alia, fire protection measures. The preparatory works (Government Bill 1970:17 p. 23

f.) state that the National Board of Health and Welfare should monitor that the interests of fire protection are satisfied in conjunction with the issuing of permits. This is especially important in situations where planning permission is not required. Naturally, such monitoring should be coordinated with the instructions and praxis of other central government agencies so that no conflicts between different provisions and no uncertainty arise as to what is applicable.

Some questions that need to be answered

SHK's report and recommendation to IVO raise a number of questions. There is reason to think about how the legal situation is to be interpreted. The following alternative questions should be answered:

1. Does IVO have supervision of fire protection in activities operated under SoL and is IVO to make a full assessment of fire protection within the scope of its permit assessment?
2. Is IVO in some other, more limited way to take the interests of fire protection into consideration within the scope of its permit assessment?

The Swedish Accident Investigation Authority's understanding of the legal situation

SHK argues that fire protection is part of IVO's supervisory responsibility under SoL. Furthermore, SHK believes that reported fire protection measures are to be assessed in conjunction with IVO's issuing of permits. A permit may only be granted if the activities fulfil the requirements for good quality and safety. Part of this, according to SHK, is that the activities are to have fully adequate structural and organisational fire protection.

The above suggests that SHK believes that IVO has supervision of fire protection and is also to make a full assessment of this within the scope of its permit assessment. At the same time, some of the wording in SHK's report suggests that a more limited responsibility is intended. The report states that "in conjunction with the issuing of permits, it should be ensured that the interests of fire protection are satisfied". It furthermore states that IVO cannot be expected to have "its own special expertise on how to appropriately design fire protection in various buildings in order to secure a sufficient level of fire protection". This expertise, SHK states, is instead found with bodies such as the emergency services and the municipal Building Committee. SHK argues that in conjunction with permit assessment IVO "should regularly consult with the municipal authorities responsible for the issue".

IVO considers SHK's argumentation to be contradictory in some respects. If IVO has responsibility for supervision and permit assessment in the area of fire protection, IVO should assume this responsibility in full. This means, inter alia, that IVO must have access to its own expertise in order to be able to make independent assessments of the activities' fire protection. It is not possible to be the responsible supervisory authority, but at the same time rely on the expertise of other agencies. Another possible interpretation of SHK's analysis of the legal position is that IVO does nevertheless have a more limited responsibility, in conjunction with the issuing of permits, for inspecting that

the interests of fire protection have been taken into consideration. This can, for example, take place through consultation with the emergency services.

IVO's understanding of the legal situation

Neither SoL nor the regulations in general state that IVO has supervision of fire protection. They also do not state that fire protection is to be covered by permit assessment other than that information on how fire protection is arranged is to be appended to the application. The regulations in the area of social services contain no provisions at all on fire protection (with the exception of Chapter 4, Section 1 SoF). Neither is fire protection mentioned in the preparatory works to SoL or in any other legal sources. To exemplify this, an article entitled *Skäligt brandskydd* (Reasonable fire protection) was submitted to the journal *Förvaltningsrättslig tidskrift* by Vilhelm Persson in 2009. The article contains a thorough regulatory review, but does not at all mention regulations in the area of social services.

IVO does not share the understanding that fire protection is an issue covered by the concept of safety in Chapter 7, Section 2 SoL. The statement in the preparatory works that it is possible to place requirements on premises to be fit for purpose does not refer to fire protection. What IVO assesses within the scope of its permit assessment is whether the premises are designed in such a way that it is possible for the activities to conduct safe care and treatment. An example of what is then referred to is that no conflicts are to arise between those residing at an HVB and which put their safety at risk.

An interpretation such as that made by SHK of the concept of safety could lead to other safety aspects also being included in permit assessment (and supervision), e.g., electrical safety and food safety. It is not reasonable that IVO's permit assessment should examine all conceivable safety aspects, which in addition are covered by the remit of other supervisory authorities. IVO has no expertise in these areas, and there are no regulations to apply. As mentioned earlier, there are no provisions on, e.g., fire protection in the regulations that IVO has been appointed to apply, and IVO does not have supervision of compliance with LSO and its associated statutes.

In summary, IVO does not feel that there are grounds for such a far-reaching interpretation as that made by SHK.

The question then is how to interpret SoF's provision that the applicant is to append information on how fire protection is arranged. As SHK notes, the issue of assessing fire protection measures in conjunction with the issuance of permits has not been discussed in subsequent legislation in the area. The only thing that exists is an older statement in the preparatory works to the care homes statute that the responsible authority should in conjunction with the issuing of permits "monitor that the interests of fire protection are satisfied".

IVO has hitherto applied the provision in question as follows.

IVO checks that fire protection has been reported in the application it receives. If the report of how fire protection is arranged appears clearly inadequate, the person who is to operate the activities is given an opportunity to supplement the information. Where necessary, IVO sends the documents for referral to the emergency services concerned. When IVO has issued a permit, a copy of the decision and the permit certificate is sent for the attention of the local emergency services to inform the latter of which activities will be operated in the area.

Some form of assessment of fire protection is thus made during the process of issuing permits, which means that IVO monitors that the interests of fire protection are satisfied. This is achieved through means such as consultation with the emergency services concerned when this is deemed a necessary measure.

If the permit applicant has not at all submitted any information on how fire protection is arranged, IVO is to reject the application, which is then incomplete. However, IVO does not consider itself to have legal support for rejecting an application on the grounds of substandard fire protection.

The legal position needs to be clarified

SHK has recommended the National Board of Health and Welfare to consider the need for clarification through regulations or general advice to secure that authorisation is not granted and facilities start to operate before the fire safety protection has been deemed adequate for the particular target group concerned. The National Board of Health and Welfare is also to clarify the need for clarification as regards supervisory responsibility.

As stated in the previous section, SHK and IVO have differing understandings of the legal position. It is unclear why the provision in question was introduced in SoF and how it is more precisely intended to be applied. There may be reason to draw the Government's attention to the ambiguities that exist and propose a clarification of the regulations. This should take place before the National Board of Health and Welfare begins work to produce regulations and general advice.

IVO considers it very urgent to prevent the reoccurrence of tragic events of this kind. Improved fire protection can be a part of this.

There may be a need to strengthen the supervision and inspection of fire protection. This should primarily be done where expertise in the area is found, i.e., under the existing supervisory organisation within the municipal emergency services. The Swedish Civil Contingencies Agency (MSB) also has a role in this context and has, inter alia, developed supervisory guidance for municipal supervision under LSO.

However, assigning IVO a supervisory responsibility for fire protection, alongside existing supervisory authorities, is something that IVO does not consider to be an appropriate measure. Giving several agencies the same task results in the duplication of work. IVO would need to build up its own expertise in the area, something which it currently lacks, and this would increase costs for central government. There is also a risk that the assessments of the various agencies

will differ and that those operating activities will then be reached by conflicting messages. What happens, for example, if IVO's supervision makes a particular assessment of a fire protection measure, but the emergency services make another?

One part of the arguments put forward by SHK in support of fire protection being assessed in conjunction with IVO's issuing of permits is that there is a risk that the interests of fire protection would not otherwise be satisfied and that activities would risk being operated in unsafe conditions. Among other things, it is stated that LSO does not place any requirements on a permit procedure or similar to ensure reasonable fire protection before a certain activity starts to operate. It is also said that the supervision conducted under LSO cannot be seen as a secure system for ensuring that, for example, an HVB has reasonable fire protection before the activity starts to operate.

However, the question is whether this type of problem is resolved by appointing a further supervisory authority alongside those already existing. IVO does not believe so.

SHK also stated that the emergency services might find it difficult to assess which special requirements may arise as a result of the target group found at a given HVB. This may, in that case, be resolved by the emergency services consulting with IVO where necessary. But neither does this question justify the arrangement proposed by SHK.

If IVO is to continue to fulfil a function in the area of fire protection, the regulations should explicitly state which responsibilities and tasks IVO has. Today, it is only stated that information on how fire protection is arranged is to be appended to an application for a permit to operate activities, which is submitted to IVO and nothing more. This is not satisfactory. IVO believes that the regulations need to be reviewed and that they should explicitly state what is expected of IVO.

In this context, IVO wishes to emphasise that a clarification of the regulations should cover all types of activities subject to a permit. This applies to all types of homes for the elderly and disabled and to open and daily activities under SoL and the Act (1993:387) concerning Support and Service for Persons with Certain Functional Impairments (LSS).

Which measures does IVO intend to take?

IVO intends to take the following measures with reference to SHK's recommendation.

IVO intends to formalise the procedures that already exist today. This entails IVO checking that fire protection has been reported in the application it receives. If the report of how fire protection is arranged appears clearly inadequate, the person who is to operate the activities is given an opportunity to supplement the information. Where necessary, IVO sends the documents for referral to the emergency services concerned. A copy of the decision and the permit certificate is sent to the emergency services in the area.

IVO's understanding is that it lacks legal support for exercising supervision of fire protection. It also lacks legal conditions for examining whether fire protection is acceptable within the scope of IVO's permit assessment. It is extremely risky for IVO to engage in the exercise of authority without explicit legal support for this. Let us imagine, for example, that IVO orders an activity to take measures to improve its fire protection. This order is associated with a fine. Alternatively, IVO rejects an application for a permit to operate a certain activity because IVO does not consider its fire protection to be up to standard. Both of these decisions entail the exercise of authority, and there may be serious consequences for IVO if it is found that the decisions were made without legal support.

IVO therefore elects to await clarification of the legal position and any clarification of the existing regulations before it takes any further measures. IVO intends to contact with the Government regarding this issue.

The decision on this statement of opinion was made by Chief Legal Officer Anna Sundberg. Legal Adviser Jonas Widell served as rapporteur.

Anna Sundberg

Jonas Widell