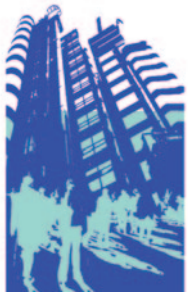
Housing repairs update 2014



In this annual review, **Beatrice Prevatt** details policy, legislation and case-law concerning housing disrepair.

POLICY AND LEGISLATION

Decent homes standard

Decent homes must meet the current statutory minimum standard for housing: they must pose no category 1 hazards, be in a reasonable state of repair, have reasonably modern facilities and services and provide a reasonable degree of thermal comfort. The government's target was that all social housing should meet the decent homes standard by the end of 2010 but this has not been met.

In February 2014, the Department for Communities and Local Government (DCLG) published the *English Housing Survey: headline report 2012–13*. This recorded that the number of non-decent homes in England continued to decline. In 2012, 4.9 million dwellings (22 per cent) failed to meet the decent homes standard, a reduction of some 2.8 million homes since 2006, when 35 per cent of homes failed to meet the decent homes standard. As in previous years, the private rented sector had the highest proportion of non-decent homes (33 per cent) while the social rented sector had the lowest (15 per cent). Meanwhile, 20 per cent of owner-occupied homes failed to meet the decent homes standard in 2012.

While housing conditions improved in all tenures between 2006 and 2012, the greatest progress occurred in the social rented sector where the number of non-decent homes almost halved from 1.1 million (29 per cent) in 2006 to 581,000 (15 per cent) in 2012.

Over the same period, the number of non-decent dwellings in the private sector fell by around 2.2 million, from 6.6 million to 4.4 million. According to the DCLG, this was driven by a decrease in the number of non-decent owner-occupied homes. While there was a marked decrease in the proportion of private rented sector homes that were non-decent (from 47 per cent to 33 per cent), the absolute number of non-decent dwellings did not decrease due to the general increase in the size of this sector.

Failing the minimum safety standard was the most common reason for not meeting decent homes criteria and, in 2012, 13 per cent of dwellings failed for this reason. Category 1 hazards were more prevalent in the private sector, with 14 per cent of owner-occupied dwellings and 19 per cent of private rented sector dwellings failing the minimum safety standard, compared with six per cent of social sector dwellings.

Around 970,000 homes (four per cent) had some problems with damp in 2012, compared with 2.6 million (13 per cent) in 1996. The most common damp problem was condensation and mould, affecting 604,000 homes (three per cent), followed by 375,000 homes (two per cent) affected by penetrating damp and 315,000 homes (one per cent) by rising damp.

The incidence of damp varied by tenure. In particular, owner-occupied dwellings were less likely to have any damp problems while all types of damp problems were more prevalent in private rented dwellings than in any other tenure. Some nine per cent of private rented dwellings had some type of damp problem, compared with five per cent of social rented dwellings. The DCLG stated that private rented dwellings were more likely to be older and therefore more likely to have defects to the damp proof course, roof covering, gutters or down pipes, which could lead to problems with rising or penetrating damp affecting at least one room in the property.

Social sector homes and owner-occupied dwellings had low levels of rising or penetrating damp (one per cent), but social sector dwellings were more likely to experience condensation and mould growth than owner-occupied dwellings.

On 23 July 2014, the DCLG published *English Housing Survey: profile of English housing 2012*, which provides more detail about the housing stock. Among other findings, it reports that since 2001 there has been a decrease in the prevalence of all types of damp. The largest decrease was in the proportion of dwellings with penetrating damp, which was the most common form of damp in 2001, from five per cent to two per cent in 2012. The DCLG said that this reduction is likely to be due to the overall improvement in the maintenance of dwellings.

In 2012, four per cent of households lived in a property with some form of damp, down from ten per cent in 2001. This decrease was mainly driven by a large decrease in the proportion of privately rented dwellings having damp problems (from 21 per cent to nine per cent), although the prevalence of damp problems remained higher in the private rented sector. The DCLG said that generally, the larger the household, the greater the likelihood of living in a damp home. However, damp was far more common for all privately rented households but was also more evident among single private renters (ten per cent) than private renters with two or three household members (eight per cent). This suggests that factors such as the degree of disrepair, the ability to heat a home and occupier lifestyles all play a part in determining the prevalence of damp.

Legal aid funding reform

As practitioners and regular readers will be aware major changes to legal aid were made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into force on 1 April 2013. From that date, most disrepair cases have been out of scope for legal aid, for both legal help and legal representation, except for cases where there is a serious risk of harm to the health and safety of an individual, which arises from a deficiency in the individual's home, and disrepair counterclaims. Full details of the changes were given in 'Housing repairs update 2013', December 2013/January 2014 *Legal Action* 11. Anecdotally, these changes, together with the increase in the small claims limit to £10,000, which occurred at the same time, have led to a large decrease in the number of public funding certificates issued and disrepair claims being brought.

Private rented sector code of practice

In September 2014, the Royal Institution of Chartered Surveyors published the *Private rented sector code of practice* for the government, which is committed to building a bigger and better private rented sector. The code of practice was drawn up by organisations representing landlords, letting agents and property managers and is intended to promote best practice in the letting and management of the private rented sector.

One of the aims of the code is to ensure good quality homes for rent. It includes a section on repairs and maintenance, which reminds landlords that they should be aware of repairing obligations imposed by statute and common law (para 4.3.4). Perhaps more

helpfully it also states that matters of disrepair should be dealt with promptly and in a timely manner appropriate to their urgency; that landlords should ensure that tenants know how to report repair and maintenance issues and have an established procedure for dealing with urgent requests for repair work, particularly for out-of-office hours; and that tenants must never be evicted for simply requesting repairs to the property. The code also stresses that when arranging repair and maintenance work on a let property, landlords must be aware that tenants are entitled to quiet enjoyment of their homes and must seek to minimise disruption. They should consult tenants on the details and programme for carrying out such works, unless urgency or the tenancy agreement dictates otherwise. Works must be carried out to a reasonable minimum standard so that they do not need to be repeated within a short period of time relative to their nature and reasonable expectations. Landlords are also expected to maintain accurate and complete records of all maintenance and insurance of the property and to inspect the property at appropriate intervals to identify whether or not there are any hazards or repairs that require attention, with records kept of the inspections and any action required and taken (paras 4.3.4–4.3.5). Members of any organisations that have signed up to the code agree to abide by its contents.

While useful, the code is less prescriptive than the draft that was circulated for consultation in April 2014, which included specific time limits of 24 hours for emergency repairs and 28 days for non-urgent repairs. Also, the code does not have the force of law in line with the government's stated commitment to minimise excessive regulation of the sector. It remains to be seen whether it will drive up standards in the sector given that the worst landlords in the private sector are unlikely to be members of the landlord organisations that have signed up to the code.

Bill to ban retaliatory evictions

On 2 July 2014, Sarah Teather MP introduced a Private Members' Bill in the House of Commons to prevent evictions where a tenant has complained about faults or asked for repairs. In September 2014, the government agreed to back the Tenancies (Reform) Bill on the condition that the bill only targets bad landlords and cannot be used by tenants to frustrate legitimate evictions. It had its second reading in the House of Commons on 28 November 2014. Should the bill become law it would give legal effect to the commitment in the code of practice (see above) not to evict tenants for simply requesting repairs to their homes.

CASE-LAW

Practice and procedure

Disrepair counterclaims after possession orders

Some tenants' advisers have been seeking to raise counterclaims for disrepair long after possession orders have been made, usually when warrants of possession are issued. In some cases this may be years after the possession order was made so that no application to set aside the possession order and defend the claim is likely to be successful.

Authority that counterclaims could be brought after a possession order had already been made is found in the mortgage possession case of *Rahman v Sterling Credit Ltd* [2000] EWCA Civ 222, 20 July 2000; [2001] 1 WLR 496, where it was held that:

The real question is whether the action is at an end, so that there are no longer any proceedings by the claimant to which [the] defendant can respond with a counterclaim. This action is not at an end. Mr Rahman and his wife are still living in the property. Sterling continue to accept monthly instalments. Sterling have not yet obtained possession of the property … Although judgment for possession has been obtained, it has not been satisfied …

■ Midland Heart Limited v Idawah

[2014] EW Misc B48,
11 July 2014

A possession order was made in November 2002, with seven subsequent stays of the warrant on terms in 2005, 2008, 2011 and 2012. In February 2014, the defendant made a further application for a stay of another warrant together with an application for permission to bring a counterclaim for disrepair. The application was supported by expert evidence, namely a report in November 2012 and a further reinspection report in January 2014. The district judge granted the application and permission to bring a counterclaim. The landlord appealed, arguing:

■ first, that the district judge should not have permitted the counterclaim to include a claim to set off as that amounted to a defence and circumvented any process of appeal and/or application to set aside the possession order;
■ second, that it had been deprived of an accrued limitation defence; and
■ third, that the district judge had failed to have any, or any sufficient, regard to delay.

The circuit judge upheld the district judge's order and dismissed the appeal. He held that although the court had permitted the tenant to defend the original claim some 11 years after judgment, that was what in effect would be the position whether the tenant's cross claim proceeded by way of a counterclaim in these proceedings or by way of separate proceedings. Either way the tenant would be seeking to set off against the claim for unpaid rent her cross claim for damages for breach of the covenant to repair. The real question was whether the action was at an end, which necessarily involves consideration of the matters that are, and/or remain, in issue between the parties. The provisions of Civil Procedure Rule (CPR) 39.3 are not strictly engaged in cases such as this. Instead the court is able to deploy its much wider powers under CPR 3.1(2)(m) and indeed generally in considering an application such as this. Accordingly, the district judge did not err in permitting the tenant to raise a counterclaim, which included either in fact or in effect a claim to set off. The deprivation of a limitation defence was not raised before the district judge and this ground of appeal was therefore rejected. It was also clear that the district judge had had regard to the issue of delay.

Comment: This case leaves undecided the effect of the deprivation of limitation point but this could perhaps be dealt with by permission only being granted to bring a counterclaim for shorter periods. Alternatively, it may be considered fair for a tenant to be able to counterclaim for longer periods where a landlord is still seeking arrears for the same period.

Costs

Qualified one-way costs shifting

■ Wagenaar v Weekend Travel Ltd t/a Ski Weekend and Serradj (third party)

[2014] EWCA Civ 1105,
31 July 2014

The claimant had been injured in a skiing accident while on a holiday arranged by the defendant. The defendant denied negligence and joined the claimant's ski instructor as a third party. At trial the judge dismissed the claimant's claim against the defendant and the defendant's claim against the third party. He ordered that the claimant should pay the defendant's costs and that the defendant should pay the third party's costs, but held that pursuant to the rules on qualified one-way costs shifting (QOCS) neither costs order was to be enforced as CPR 44.13 makes it clear that QOCS applies to 'proceedings which include a claim for damages … for personal injuries'.

On appeal it was held that the word 'proceedings' in CPR 44.13 was used because the QOCS regime is intended to catch claims for personal injuries where other claims are additionally made by the same claimant, for example, claims for damaged property in addition to the claim for personal injury damages, as the draftsman would plainly not

have wished to allow such additional matters to take the claim outside the QOCS regime. Rule 44.13 applies QOCS to a single claim against a defendant or defendants, which includes a claim for personal injuries but may also have other claims brought by the same claimant within that single claim. It did not apply QOCS to the entire action in which a claim for damages for personal injury was made. Accordingly, the defendant's appeal was dismissed but the third party's appeal allowed, with the defendant being ordered to pay the third party's costs. The court left open the issue of whether QOCS should apply to a subsidiary claim for damages not including damages for personal injuries made by such a claimant against another defendant in the same action as the personal injury claim, as it did not arise in this case.

Comment: This case states that QOCS applies to a single claim, which includes a claim for damages for personal injuries but also includes other claims bought by the same claimant within the single claim. It suggests that QOCS would therefore apply to disrepair claims, which include personal injury claims, and this may therefore remove any need to obtain after the event insurance for disrepair claims that are run under conditional fee agreements (CFA), albeit such disrepair claims are often much larger than the personal injury claims brought on the basis of disrepair.

Liability

Contractual liability

■ Walker and Parsell v Hackney LBC

Clerkenwell and Shoreditch County Court, 30 January 2014[1]

The tenant and her partner both had mobility difficulties. They lived in a fourth-floor flat in a block served by a lift that required repairs, which would take the lift out of action for 12 weeks and render the tenant effectively housebound. With the assistance of a neighbour, they brought a claim seeking an order that the council urgently rehouse them 'in a suitable social housing home with step free access to street level within 0.5 miles of their existing home'.

HHJ Mitchell found that there was a serious issue to be tried as to whether the council was in breach of the tenant's right to use the lift and whether the council had failed to make a reasonable adjustment. He granted an interlocutory injunction that the council provide the tenant with a one-bedroom flat on the ground floor, or with access by a lift, within a mile of the tenant's tenancy and within 28 days of his order.

The council appealed the decision on the basis that there was no jurisdiction to make such an order as it amounted to an allocation and there was no statutory power to grant a temporary move. The council sought a stay of the injunction pending the hearing of the appeal but this was refused. The High Court granted permission to appeal but ordered that the interim injunction was to continue pending the hearing of the appeal.

The appeal was resisted on the basis that there was power to order a temporary (but not permanent) move in contract and under the Equality Act 2010 and the Human Rights Act 1998. It was argued that the failure to move the tenant amounted to indirect discrimination against physically disabled tenants who were unable to use the stairs, a failure to make a reasonable adjustment to the practice of not providing alternative accommodation during repair works, and a breach of the occupiers' article 8 right to respect for their home, which included a right of access.

The lift was repaired before the appeal was heard so that it became academic. The council discontinued its appeal and agreed to make a contribution to the claimants' costs.

■ Anselm v Buckle

[2014] EWCA Civ 311, 18 March 2014

This is a Court of Appeal decision about works required under a commercial lease and a tenant's obligation to mitigate his loss in the face of a landlord's breach. Where failure to mitigate is relied on in answer to a claim for damages for breach of contract it is for the defendant to the claim both to plead and prove a case to that effect. The case that the landlords pleaded and sought to prove was that the tenant should have used retention money to carry out the repairs. This case was rebutted at trial, and the judge placed no reliance on it. Instead he concluded against the tenant on a basis of his own, which had neither been put to the tenant nor proved. The result was not fair to the tenant and it was not unreasonable for him not to spend what looked like the bulk of his available cash resources to carry out works that the landlord had undertaken to carry out. The tenant was given no opportunity to address the question of whether he could have afforded to pay for the works from his own resources at that time, since it was not suggested during the trial that he should have done so.

■ DR v Southwark LBC

Lambeth County Court, 11 June 2014[2]

The tenant bought a claim for disrepair including for historic penetrating damp to the bathroom wall and condensation, which caused saturated plaster to the external wall in the bathroom. Although it had been considered that the damp was a mixture of penetrating dampness and condensation, an expert inspection before trial, which included carbide testing, showed that the core of the wall was dry. However, the internal surface of the plaster on the walls was wet. The expert described the plaster as saturated but maintained that it was due to water penetration from the outside. At trial the tenant conceded that the majority of the damp was condensation but argued that the landlord was liable for the damp plaster in the bathroom. The landlord argued that wet plaster was not in disrepair as there was no deterioration in its structure, relying on *Post Office v Aquarius Properties Ltd* [1987] 1 All ER 1055 and *Quick v Taff-Ely BC* [1986] 1 QB 809, 29 July 1985.

District Judge Desai held that the saturated plaster was in disrepair, finding that it cannot be said that the level of humidity or moisture retention, whatever the cause, meant that it had not reached a stage of being in disrepair.

Comment: The landlord is appealing this decision and a rolled up permission and appeal hearing is due to take place in February 2015.

Tortious liability

Negligence and nuisance

■ Cunningham v Cameron and British Gas Services Ltd

[2013] ScotCS CSOH 193, 13 December 2013

In the 1950s a house had been converted into two separate self-contained flats. In 2006 a fire broke out damaging both flats. The source was the gas boiler of the lower flat. The owners of that flat brought claims against the owners of the upper flat and against British Gas, the former for obstructing their gas boiler flue outlet (by leaning timber against it) and the latter for breach of contract in failing to detect and remedy a gap in the flue.

A judge allowed the claim and held that the owners of the upper flat were liable in nuisance and negligence for two-thirds of the damages.

Quantum

In accordance with the decision in *Simmons v Castle* [2012] EWCA Civ 1288, 10 October 2012, paragraphs 48 and 50, from 1 April 2013 general damages in disrepair claims have been increased by ten per cent. It is likely that this will be a further incentive to calculate general damages by reference to diminution in rental value given that it will be clear how to uprate such an award, whereas global awards are inherently more arbitrary. However, it appears from the cases reported below that not all courts are making separate awards for the ten per cent uplift. Advisers are reminded that this should be sought on all occasions, save where the case is funded under a CFA that was signed before 1 April 2013.

■ Armes v Wheel Property Co Ltd

Clerkenwell and Shoreditch County Court, 17 May 2013[3]

The property was a self-contained two-bedroom basement flat in a Victorian conversion. The

tenant had been in occupation for nearly 30 years with a protected tenancy. Her current rent was £191 per week.

The property had been subject to damp and mould for many years. There was dampness to walls and floors in the living room, kitchen, bathroom and one of the bedrooms. This had caused some plaster to 'blow'. The housing file recorded a number of leaks into the property from various sources and the tenant asserted that she had notified her landlord about these.

Dehumidifiers were installed at the property in August 2012 to confirm that the damp found in April 2012 was not caused by a flood, which took place in August 2011. The parties' experts subsequently agreed that the property suffered from disrepair caused by penetrating/rising dampness and agreed a schedule of remedial works.

Following a contested trial where the landlord disputed notice, the judge awarded £18,161 and ordered specific performance of the schedule of works. The award included special damages of £2,460 and general damages of £15,701 (6 x 30 per cent rental liability reduction).

■ Thomas v AJ Bradburn (acting as receiver for Adelphi Properties Ltd)

Manchester County Court, 17 October 2013[4]

The claimant was the tenant of a two-bedroom mid-terrace house from 5 November 2007. His rent was £85 per week until April 2009, when it went up to £95 per week. From the outset, the claimant experienced problems with the hot water system and the storage heaters. Central heating was installed in March 2008 but that did not work properly and the landlord failed to repair it satisfactorily until May 2011. From late 2008 the roof had a hole in it, which allowed water to leak through on to the ceilings upstairs. Damp patches developed and water leaked into the bathroom. The landlord undertook patch repairs but they were inadequate. By late 2009 the problems with the roof had worsened to the extent that water leaked in through the ceilings and the claimant's bedroom ceiling collapsed. The claimant had to sleep downstairs for a period of a year because of the leaks and dampness and state of his bedroom ceiling. The claimant had a pre-existing diagnosis of asthma, which he complained had been aggravated by the condition of the property.

District Judge Moss found the landlord liable and made the following awards of damages:

■ £750 for the defective storage heaters and faulty hot water system for the period November 2007 to the end of March 2008 (equating to around 40 per cent of the rent for that period).

■ £3,750 for the intermittently functioning heating and hot water system from November 2008 to May 2011 (equating to approximately 30 per cent of the rent for that two-and-a-half year period).

■ £1,500 for the disrepair to the roof and the associated state of the ceilings upstairs and of the damp from late 2008 to late 2009 (equating to approximately 30 per cent of the rent for that year).

■ £2,500 for the leaks and dampness between the end of 2009 until the end of 2010 when the position worsened significantly and the claimant had to sleep downstairs and was unable to use the upstairs of the property (equating to approximately 50 per cent of the rent for that year).

■ Therefore, between the end of 2008 and the end of 2009 the claimant received, in total, a notional reduction in rent of approximately 60 per cent. For the period from the end of 2009 to the end of 2010 he received, in total, a notional reduction in rent of approximately 80 per cent.

■ Furthermore, the claimant was awarded £850 for the aggravation of his asthma by the conditions of the property, the aggravation being to the extent of 20 per cent.

■ He was also awarded £1,250 in special damages for those items that were damaged beyond repair due to the leaks and the collapsing ceiling.

■ Nzau v Gani

Croydon County Court, 21 November 2013[5]

The tenant complained about damp and water penetration to her flat, from the commencement of her tenancy in late 2006 until her eviction in August 2012. The water penetration affected her kitchen and bathroom, which were in part situated underneath a balcony. There had also been historic heating defects on account of a defective boiler and various other defects, both on the interior and exterior of the property. In February 2011, the local authority had served an abatement notice on the landlord under section 80 of the Environmental Protection Act (EPA) 1990, requiring him to address the water penetration.

Deputy District Judge McCloskey found the landlord liable for the water penetration into the kitchen and bathroom as well as the heating defects. However, damages for the water penetration were discounted by 50 per cent because there was no conclusive evidence from either side about whether the damp at the property was a mixture of condensation damp and penetration damp. The court found that the water penetration should have been remedied by January 2007. The following awards of damages were made:

■ Over the 24-month period from January 2007 to December 2008, general damages were assessed at ten per cent of a monthly rent of £1,150 (following the 50 per cent discount), making an award of £975.

■ For the period from January 2009 to March 2012, when there was more disrepair at the property, damages were assessed at 50 per cent, which was reduced to 25 per cent to account for condensation. The award for this period of three years and two months was £7,717.

■ For the period from April 2012 to August 2012, damages were assessed at five per cent, which was discounted to 2.5 per cent, giving a figure of £101, making a total award of £8,793 for water penetration.

■ A separate award was made for the defective boiler of £10 per week, covering the period from November 2006 to October 2009. The court stated that the award of £10 per week was an average over the year, to take into account that more heat was needed during the winter months, but hot water was required throughout the year. The award for the boiler issues was £1,560.

■ The judge took a robust approach to the special damages claim, in the light of the condensation, and reduced the amount claimed by a third. He awarded £550, making a total award of £10,903.

■ Clark v Affinity Sutton Homes Ltd

Barnet County Court, 28 March 2014[6]

The claimant was a tenant of a one-bedroom flat from 29 November 2004 until 10 February 2014 when he was decanted. The claimant suffered from poor health. He had had chronic obstructive pulmonary disease since 2006, rheumatoid arthritis since 2007 and also had bladder cancer. A default judgment was obtained against the defendant on 14 October 2013 and the claimant sought damages for dampness from January 2007. Remedial works were carried out in 2008 and again in January 2013. The expert evidence records water penetration to the bathroom with condensation dampness and mould growth to the living room, bedroom and kitchen. However, following the claimant's decant it was found that the damp problems had been caused by a defective damp proof course.

Deputy District Judge Gillman awarded damages for the period 1 April 2007 to 31 August 2008 at 30 per cent of the rent actually due and for the period from 1 January 2012 to 10 February 2014 at 45 per cent of the rent due. The judge made no award for the period from September 2008 to January 2012, finding that on the balance of probabilities it was unlikely that there were any significant problems in this period. There were no complaints logged during this period and not a single e-mail, although there had been extensive e-mail correspondence in 2007 and again in 2012/13.

■ The award in respect of general damages was therefore £6,779.88, which was uplifted by ten per cent in accordance with *Simmons v Castle* to give a total general damages award of £7,457.86.
■ The judge also awarded £2,667.60 for special damages, having discounted the figures claimed by 25 per cent for depreciation, save in respect of the carpet, which he allowed in full as it would be difficult, if not impossible, to purchase second-hand carpets.
■ The judge also awarded £20 per week for the use of a dehumidifier 24 hours a day for eight weeks (having received details of average running costs) and £5 per week for additional heating costs for 183 weeks in the six years claimed.
■ The total award for special damages was therefore £3,742.60, making a total award of £11,200.46.

■ Bitan v Holme

Stockport County Court, 14 April 2014[7]

The tenant of a two-bedroom house counterclaimed for harassment and disrepair in a possession action, where the claim for possession was struck out. The tenant complained of water leaking from the bathroom into her dining room, draughts through a hole in the exterior wall and a defective window. The ceiling to the dining room began to perish and the tenant became anxious about her family's safety.

An award of £5,783.22 was made for 23-and-a-half months of disrepair, made up of 40 per cent diminution in value of the monthly rent of £550, plus an uplift of ten per cent in accordance with *Simmons v Castle*. An order for specific performance was also made. Further damages were awarded for harassment and for failure to provide the prescribed information in respect of the tenancy deposit.

■ Wade v Dormeuil

West London County Court, 8 August 2014[8]

The tenant of a two-bedroom flat, from 19 October 2010 until 12 October 2013, counterclaimed in respect of disrepair. The defence to the counterclaim was struck out and the case proceeded solely on the basis of the tenant's evidence. The tenant sought damages for a defective roof/gutters causing water penetration to the rear bedroom and hallway, with some intermittent penetration to the main bedroom and some current dampness to the living room, a defective flush to the toilet, two gas leaks resulting in the lack of hot water for five days, a slow water flow into the water tank, defective and cracked plaster, defective windows to the living room, a defective radiator and some external defects, namely, defective gutters, cracks to the render and rot to the joinery.

District Judge Rowlands found all the claims made out and identified the three main claims as follows:
■ The damp and cold to the living room, which meant the tenant had to buy additional covers to sit underneath.
■ The problem with the toilet, which did not flush to the extent that the tenant had to use plastic gloves to clear the toilet for approximately two years.
■ The damp to the second bedroom, which could not be used for any purpose.

He took account of the fact that the tenant had moved in with her autistic son, who was then aged four, to give him more space, and had been distressed at not being able to give him the experience she wanted. He questioned why the tenant had not given up the tenancy but accepted that she was unable to raise a deposit, would have had difficulty finding other accommodation, and was realistic in her hope that taking proceedings would have caused the disrepair to be rectified.

He assessed damages as follows:
■ He awarded 40 per cent of the rent, which was £18,000 per annum, for the first two years when all the problems existed, and 25 per cent of the rent for the third year when the toilet had been fixed. This amounted to a total award of £18,900.
■ He awarded an additional ten per cent in accordance with *Simmons v Castle*, making a total claim of £20,790.
■ As this was substantially in excess of a Part 36 offer that had been made, he awarded an additional ten per cent in damages, plus 5.5 per cent interest, making a total award of £24,203.35.
■ He also ordered the costs up to the expiry of the Part 36 offer on a standard basis and from the expiry of the Part 36 offer onwards on an indemnity basis, and interest on those costs at 5.5 per cent.

■ Whittingdon v Uddin

Clerkenwell and Shoreditch County Court, 14 August 2014[9]

The tenant brought a claim for damages for breach of the covenant of quiet enjoyment, harassment and disrepair against his landlord. For a period of three years the premises suffered from defective windows throughout, water penetration in the bedroom, some internal leaks in the kitchen and WC, and some external disrepair. The landlord failed to carry out any repairs despite repeated complaints.

District Judge Sterlini awarded:
■ £10,650 for disrepair. This comprised:
– £1,800, being a 100 per cent reduction in the rent for a six-week period in November and December 2013 when the claimant had to move out because the premises were uninhabitable;
– a global award of £7,500 to reflect the other items of disrepair over a period of three years (including a 17 per cent reduction in rent during this period); and
– he also awarded £1,000 for defective chattels that were provided under the terms of the tenancy agreement and that were broken but not repaired/replaced and £350 for the cost of plumbing repairs paid for by the tenant.
■ In addition a further £16,000 was awarded in respect of the harassment claim.

■ Holmes v Lambeth LBC[10]

Lambeth County Court

A long leaseholder of a two-bedroom maisonette complained of disrepair from 2008. There had been a number of external defects including an excessive gap between the brickwork and window frame to one of the bathroom windows and fungal decay to two other windows. There was also spalled brickwork over the main structure at the front of the premises, missing and defective pointing to the right of the chimney stack, cracking to the chimney stack itself, missing slates to the roof covering at the rear and cracked areas of concrete to the rear concrete staircase. For a period of three years there was water penetration through the roof causing cosmetic damage to the plaster in the eaves storage area and relatively minor staining to the plaster and decorations on the stairs. The defects mainly affected the exterior of the premises and therefore the inconvenience caused to the leaseholder was minimal. The cost of repairs was estimated to be £9,000.

The claim settled in October 2014 at the point after which listing questionnaires were filed. Special damages were claimed in the region of £1,400. The second-hand value of the special damages was worth in the region of £500. Settlement negotiations were entered into on the basis of *Earle v Charalambous* [2006] EWCA Civ 1090, 28 July 2006, by using the starting point for calculating damages for leasehold premises as a percentage of the market rental value. The average market rental value for a comparable property in the area was in the region of £19,500 per annum.

The local authority made a global offer in the sum of £15,000 and also agreed not to seek to recover the leaseholder's share of service charges in respect of the works. As part of the settlement Lambeth also agreed to pay for an inspection by the single joint expert and carry out any works found to be incomplete.

■ Coleman v Peabody Trust[11]

Lambeth County Court

A tenant's two-bedroom flat had cracked and defective windows throughout the premises (five in total), which were draughty, from end of 2009 to August 2014. The claim settled in August 2014 for £7,500. The rent was £124.17 per week (£6,456.84 per annum) so this settlement equates to approximately 23

per cent of the rent.

■ Lawrence v Lambeth LBC[12]

Lambeth County Court

The tenant of a four-bedroom maisonette brought a claim for disrepair, which as a result of a limitation defence was limited to the disrepair suffered since May 2007. The windows at the premises were in poor condition with four of the windows rotting away, letting in water and with mould growth around them. Patch repairs to the windows were carried out in June 2012.

The central heating was defective for several years. The claimant could only use the heating and hot water together and was unable to use the services independently of each other. It also took quite a while for the water to heat up and none of the radiators heated up properly. Some of the radiators did not heat up at all and some of them only heated at the bottom. The heating was remedied in December 2011. There was also an intermittent leak under the sink and from behind the toilet. The premises were infested with mice for around four years, possibly coming from underneath the floorboards.

The tenant suffered from constitutional asthma and recurrent bronchitis, which had been exacerbated by the cold and damp conditions at the premises, and was admitted to hospital with shortness of breath on two occasions and thereafter experienced symptoms of central chest pain, poor respiratory function and nocturnal coughing.

Due to the tenant's health the landlord agreed that some of the internal works could not be done with her in occupation. The tenant was prioritised for a permanent transfer but no suitable properties became available and so the landlord started works in or around late August 2013 with the tenant still in occupation.

The claim was defended on the basis that the standard of repair was commensurate with the property's age, condition and status as public sector housing and that works were carried out as required when notified to the landlord. It was also alleged that the tenant neglected the garden to the extent that overgrown ivy had caused damage to the windows.

The claim settled within a few weeks of the trial date, in June 2014, for a global figure of £12,500 made up of:

■ £1,500 for exacerbation of asthma due to the damp conditions;

■ £9,500 general damages, amounting to £1,583 per annum for six years, where the rent was £144 per week. This equates to approximately 20 per cent of the rent;

■ £1,500 special damages, most of which was a contribution towards the tenant's care costs. A substantial discount was agreed in respect of the special damages as the tenant had smoked for most of her adult life.

The defendant also agreed to carry out additional works as part of the settlement including decorating throughout, dry lining of walls, repair to the boundary fences and insulation of the loft.

Scottish Public Services Ombudsman decision

■ Waverley Housing

201304103,

October 2014

A tenant's support worker complained that the housing association did not provide adequate and appropriate assistance to the tenant when there was no heating or hot water in his home over a weekend in October. The tenant had undergone surgery, which required him to be careful about his personal hygiene, and also had temporary care of his young son. The association was aware of the tenant's personal circumstances but its response was to suggest that the tenant should contact family or friends to see if he could stay with them and/or use their washing facilities, or use the local swimming pool, over the weekend. It also supplied two temporary heaters.

Given the time of year, the tenant's state of health and the fact that he had his young son in his care, the ombudsman considered the tenant's situation to be an emergency. It considered that the association had failed to properly appreciate the adverse effects the problem had on him and his son and had not taken all reasonable action to help him. It recommended that the association issue the tenant with an apology and pay the maximum amount payable under its policy for unreasonable delay in completing an emergency repair, namely £100.

Environmental Protection Act 1990

Practitioners are reminded that action under the EPA remains an alternative to disrepair claims and is especially useful for condensation cases. Such claims may also be a means of obtaining compensation for clients where the claim is relatively short-lived and would therefore be likely to be a small claim in any event.

■ Dingwall v Lambeth LBC

Camberwell Green Magistrates' Court, 28 April 2014[13]

The tenant's flat had mould and damp that the council failed to eradicate. Her solicitors served an EPA s82 notice on the council on 17 January 2014, and issued proceedings on 11 February 2014. Lambeth pleaded guilty at the first hearing on 8 April 2014. At the subsequent hearing for sentencing on 28 April 2014 the council argued that the tenant should not be awarded compensation. The court disagreed and awarded compensation of £750 plus works to improve her home so the damp and mould would not return, including the installation of double glazing and upgrading the insulation, and her legal costs. A fine of £250 was ordered.

1 Olukemi Ajayi, Edwards Duthie solicitors and Beatrice Prevatt, barrister, London.
2 Charlotte Collins, Anthony Gold solicitors and Liz Davies, barrister, London.
3 Siddiq Fazaluddin, Hodge Jones & Allen solicitors and Michael Paget, barrister, London.
4 Platt Halpern solicitors, Manchester and Gary Willock, barrister, Manchester.
5 Shilpa Sehgal, Duncan Lewis solicitors and Barbara Zeitler, barrister, London.
6 Safiye Connor, Osbornes solicitors and Moraya Fagborun Bennett, barrister, London.
7 Mohammed Yasser, Keoghs, Nicholls, Lindsell & Harris solicitors, and John Hobson, barrister, Manchester.
8 Christopher Gaunt, Duncan Lewis solicitors and Beatrice Prevatt, barrister, London.
9 Hodge Jones & Allen solicitors and Marina Sergides, barrister, London.
10 Charlotte Collins, Anthony Gold solicitors, London.
11 Charlotte Collins, Anthony Gold solicitors, London.
12 Charlotte Collins, Anthony Gold solicitors, London.
13 Timothy Waitt, Anthony Gold solicitors, London.

Beatrice Prevatt specialises in housing and community care law at Garden Court Chambers. The author would like to thank the colleagues at notes 1–13 for the transcripts or notes of judgments.