Housing repairs update 2009

Beatrice Prevatt details the latest policy, legislation and case-law concerning housing disrepair in this annual review.

POLICY AND LEGISLATION

Decent homes standard

The definition of what is a decent home was updated in 2006 to take account of the Housing Health and Safety Rating System (HHSRS) which replaced the fitness standard as the statutory element of the decent homes standard. Decent homes must meet the current statutory minimum standard for housing (they must now 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.

In January 2009, the *English House Condition Survey 2007. Headline report* was published by Communities and Local Government (CLG).[1] This presents key findings from the English House Condition Survey 2007. The survey estimates that there were 7.7 million non-decent homes in 2007, a little under 35 per cent of the housing stock. Registered social landlord (RSL) stock was least likely to be non-decent (26 per cent) and privately rented accommodation was most likely to be non-decent (45 per cent). Overall 1.1 million homes in the social sector were non-decent (29 per cent).

The survey shows no (statistically significant) change in the number or proportion of the housing stock that was non-decent between 2006 and 2007. Only the private rented sector shows any significant reduction in the proportion of homes that were non-decent (from 47 per cent to 45 per cent). The key reason for this improvement in private renting is likely to be the number of new and existing properties entering the sector during this period: the private rented sector grew more than any other sector between 2005 and 2007.

Some 4.8 million homes (nearly 22 per cent of the housing stock) had HHSRS category 1 hazards present in 2007. There are marked differences in the incidence of hazards across the social and private housing sectors. Within the social sector a little over 0.5 million homes (13 per cent of all social housing) had category 1 hazards present compared with 4.5 million privately owned homes (24 per cent) in 2007. Privately rented homes were most likely and those rented by RSLs least likely to have category 1 hazards present (30 per cent compared with 12 per cent).

The government's target is that all social housing should meet the decent homes standard by 2010 and to increase the proportion of private housing in decent condition occupied by vulnerable groups. An Audit Commission report on social housing *Building better lives: Getting the best from strategic housing. Local government*, published in September 2009, said that the government's 'high ambitions' for a number of targets, including the decent homes standard, had not been 'matched by reality'.[2] It stated that private sector vulnerable households were ahead of target, however the social sector target was tougher but well funded. It concluded that, given the recent deterioration in the economy, meeting the 2010 deadline was now 'all but impossible'.

In November 2008, CLG published the *English House Condition Survey 2006: Annual report*, which contained a chapter on damp and mould.[3] This recorded that while there had been some reduction in the proportion of homes with damp since 1996, around 2.1 million homes (ten per cent) still had problems with damp in 2006. Serious condensation or mould growth was far more prevalent in rented homes, especially those owned by local authorities or private landlords where eight per cent had these problems. Households living in homes with damp problems had a varied awareness and reaction to the problems but those living in homes with serious condensation or mould problems were most likely to find the conditions distressing.

The *English House Condition Survey 2007: Annual report* was published in September 2009 and includes a chapter on disrepair.[4] This reports that some 56 per cent of all homes had one or more faults to the exterior fabric of the property in 2007 the most common relating to the wall finish and windows. Thirty-three per cent of all housing stock had interior faults, the most common relating to ceilings. The average cost of carrying out all basic repairs to the stock was £1,820 per dwelling at 2007 prices, which equates to a total repair bill of over £40 billion. However, 50 per cent of all homes had basic repairs costing £470 or less. Some 89 per cent of this total repair bill related to private sector homes with the private rented sector accounting for 20 per cent of the total required expenditure while comprising only 12 per cent of homes. For the stock as a whole, the majority of the required expenditure (64 per cent) was for repairs to the external fabric of the dwelling. Levels of urgent and basic repairs had roughly halved in real terms since 1996 with the biggest reductions apparent in the private rented sector and for homes in urban and city centres. The large improvement of the private rented sector was caused by increased investment which was particularly evident in those properties that were new to the sector.

Housing: proportionate dispute resolution

The Law Commission's final report, *Housing: proportionate dispute resolution* (Law Com No 309), published on 13 May 2008, recommended that 'stand alone' housing disrepair cases brought by tenants should be transferred to the proposed new Land, Property and Housing Chamber of the First-tier Tribunal, with consideration being given to including housing-related statutory nuisance cases and Defective Premises Act (DPA) 1972 cases as well.[5] On 16 July 2009, the government published its response to this paper in which it stated that it was not satisfied that a case had been made out for the transfer of disrepair cases from the county courts to the tribunal: *Hansard* HC Written Ministerial Statements cols 60WS–61WS, 16 July 2009.

Review of civil litigation costs

In May 2009, Lord Justice Jackson published *Review of civil litigation costs: preliminary report*, which includes a chapter on housing claims (chapter 31).[6] This finds that there are few problems in relation to costs in disrepair claims (para 3.4), although the report does raise some concerns in relation to success fees under conditional fee agreements (CFAs). The report also suggests that there should be a comprehensive fixed-costs regime in the fast track and, in particular, that housing disrepair claims

could be subject to fixed costs. It tentatively identifies that housing disrepair claims should be treated as road traffic accident cases with a personal injury element (chapter 22 Part 5, para 2.8) which would, under the figures used in the report, attract a maximum fee (in cases where there are additional work factors) for pre-issue settlements of £1,722 plus 12 per cent of damages with a reduction of £255 for early admission of liability. For post-issue settlements, the maximum fee would be £2,308 post-issue and pre-allocation; £2,842 post-allocation and pre-listing; and £3,621 post-listing, plus in all cases 23 per cent of the damages awarded, less a reduction of £385 for early admission of liability within the pre-action protocol period. For cases which proceed to trial the advocacy and other fixed costs would be added. Lord Justice Jackson is due to complete his final report for publication in December 2009 or January 2010.

Comment: These figures would represent a significant reduction in the costs recoverable for most disrepair claims and would be likely to mean that it would no longer be viable to run many disrepair cases which are significantly different from road traffic cases in that they often include claims for remedial works in addition to damages and concern problems which may have been ongoing over a period of six years or longer rather than a one-off accident, with the consequent voluminous documentation this may entail. Strong representations against fixed fees have been made by the Housing Law Practitioners Association and other tenants' representatives. It is not only the fees of legal advisers which are under attack (see below).

Legal aid: funding reforms

On 20 August 2009, the Ministry of Justice published a consultation paper, *Legal aid: funding reforms*, seeking views on, among other things, proposals to reduce spending on experts' fees in all legal aid cases.[7] The proposal is to set maximum hourly rate bands for experts. The rate proposed for surveyors is £47–£100 per hour for preparation with attendance at court for a full day to be paid at a rate of £226–£490. The paper suggests that payments would not normally be expected to reach the top end of the bands. The consultation closed on 12 November 2009 and a response is due to be published this month. See also page 6 of this issue.

Tenant Services Authority

The Tenant Services Authority (TSA), which was set up as a result of the Housing and Regeneration Act (H&RA) 2008, took over the regulatory powers of the Housing Corporation on 1 December 2008. It is intended that by April 2010, the TSA will regulate all social housing provided by registered providers in England including local authority landlords and arms length management organisations (ALMOs). The TSA will be responsible, among other things, for setting standards for the provision of social housing and monitoring compliance with them. These standards may require registered providers to comply with specified rules including rules about the terms of tenancies, maintenance and estate management (H&RA s193). The TSA may issue codes of practice in relation to standards (H&RA s195) and may require landlords to pay compensation where they have failed to meet the standards set (H&RA ss237–8). However, the TSA cannot award compensation where the Ombudsman has awarded compensation, save if such compensation has not been paid as recommended (H&RA s239). There is nothing in the H&RA which requires that tenants and their advisers must complain to their landlord before making complaints directly to the TSA, as is the position with complaints to the Ombudsman.

In November 2009, the secretary of state directed the TSA that its national standards must address the quality of accommodation provided by registered providers: *Directions to the Tenant Services Authority: summary of responses and government response*.[8] On 12 November 2009, the TSA began a consultation exercise on the precise terms of the standards which will apply from April 2010: *A new regulatory framework for social housing in England. A statutory consultation*.[9] The closing date is 5 February 2010. The final version of the standards are due to be published in March 2010.

CASE-LAW

Practice and procedure

Conditional fee agreements

■ Birmingham City Council v Forde

[2009] EWHC 12 (QB), 13 January 2009

Birmingham's appeal against the decision of the costs judge, Master Campbell (reported in December 2008 *Legal Action* 30), in which he held that a second CFA which replaced an earlier CFA was valid and enforceable, was dismissed. Christopher Clarke J upheld the decision that a CFA could be retrospective and held that a retrospective success fee was not necessarily contrary to public policy. However, any such retrospective success fee might well be unreasonable and vulnerable to reduction or elimination on assessment. Birmingham has been granted permission to appeal on whether a CFA and/or a success fee can be retrospective.

Liability

Contractual liability

Contractual disrepair claims are only possible for the periods when the contract or tenancy agreement exists. This caused problems for former secure tenants/tolerated trespassers who had breached suspended possession orders and thereby lost their tenancies. Such former tenants had to resurrect their tenancies in order to be able to pursue disrepair claims. The provisions of H&RA s299 and Schedule 11 mean that such former tenants now have replacement tenancies, but can only bring disrepair claims for the period when they were tolerated trespassers if the replacement tenancy is treated as, in effect, the revival of the original tenancy under H&RA Sch 11 para 21(3) which states:

In proceedings on a relevant claim the court concerned may order that the new tenancy and the original tenancy are to be treated for the purposes of the claim as –
(a) the same tenancy, and
(b) a tenancy which continued uninterrupted throughout the termination period.

■ Lewisham LBC v Litchmore

Bromley County Court, 2 October 2009[10]

The tenant had been a tolerated trespasser following the breach of an earlier suspended possession order. The level of arrears on the rent/mesne profit account had vacillated between approximately £2,500 and £100 credit over a six-year period. It was anticipated that a disrepair claim for the full period would exceed the current rent arrears. Fresh possession proceedings were brought by the council and the tenant brought a disrepair counterclaim. The council did not challenge the tenant's status or right to bring a counterclaim before 20 May 2009, and thereafter he had a replacement tenancy.

The tenant applied subsequently for an order that the replacement tenancy was to be treated as the same tenancy as his original tenancy and to have continued uninterrupted throughout the termination period under H&RA Sch 11 para 21(3).

The council opposed the application and the tenant argued that:

- there had been no reduction in the charge for mesne profits;
- the council had acted as if it was bound by the original repairing obligations throughout;
- to refuse the application would amount to a double penalty and be a breach of article 6 of the European Convention on Human Rights

('the convention') where the current rent arrears was an admitted debt which could be enforced by the council against him.

The court made the order that the replacement tenancy be deemed the same tenancy and continuous from the date of possession in the original order, so that the counterclaim could include the full period of alleged disrepair. The council was granted permission to appeal but did not do so. See also page 14 of this issue.

■ Brunskill v Mulcahy

[2009] EWCA Civ 686, 20 May 2009

The tenant claimed damages under Landlord and Tenant Act (LTA) 1985 s11 for personal injury sustained when he fell as he descended the front outer steps to his flat. The tenant attributed the fall to slipping on moss or slime which he noticed on return to the premises from the hospital. The tenant argued that while a landlord was not under a duty to remove obstructions or potential hazards of a transient nature, there was a breach of the duty to repair because of the presence of the moss on the steps. The claim failed. The judge found that it is not a matter of repair to remove some moss which has been on a step for an indeterminate period of time. The appeal was dismissed.

Tortious liability

Defective Premises Act 1972 s1

■ McMinn Bole and Van Den Haak v Huntsbuild Ltd and Richard Money (t/a Richard Money Associates)

[2009] EWHC 483 (TCC), 13 March 2009

In a claim for breach of contract and under DPA s1, the owners of a house which had been built with inadequate foundations sought damages against the builders on the basis that they had failed to build the house in a workmanlike manner and against the structural engineers on the basis that they had failed to carry out their work in a professional manner. The owners claimed that as a consequence of these failures the house was unfit for habitation. HHJ Toulmin CMG QC, having reviewed the authorities on unfitness, concluded that:

- a finding of unfitness for habitation, when built, is a matter of fact in each case;
- unfitness for habitation related to defects rendering the dwelling dangerous or unsuitable for its purpose and not to minor defects;
- such a defect in one part of the dwelling may render the dwelling unsuitable for its purpose and therefore unfit, even if the defect does not apply to other parts of the dwelling;
- defects may render a property unfit even if the effects were not evident at the time the dwelling was completed; and
- the effect of the defects as a whole must be considered.

Considering the defects as a whole, the house as built was unfit for habitation under DPA s1 in that it was built with unstable foundations which resulted in movement and cracking and other defects caused by heave. The house was unsightly and potentially dangerous. The judge ordered remedial works costing £214,116.91, rejecting less extensive works proposed by the second defendant. General damages of £4,500 were agreed.

The Court of Appeal dismissed an appeal by Richard Money Associates: [2009] EWCA Civ 1146. It held that whether or not a dwelling is unfit will always depend on the facts of the particular case. In many cases, it will be highly relevant whether it is necessary for the occupants to vacate for a long period while remedial works are carried out. It was clear that when the judge referred to defects that render a property unfit for its purpose, he meant defects which render it unfit for habitation, as the obvious purpose of a dwelling is for it to be occupied and inhabited safely and without inconvenience. The judge was not obliged to consider each defect individually, but was entitled to ask whether or not the dwelling as a whole was unfit. He was also entitled to conclude that the costs of remedying all the defects was attributable to the defective foundations and was a foreseeable consequence of the breach of DPA s1: he was not limited to awarding no more than the cost of rendering the property fit for habitation.

Damages

■ Ryan v Islington LBC

[2009] EWCA Civ 578, 19 June 2009

In 2003, a council tenant sought to buy her home, which suffered from subsidence and required underpinning. The council served two notices to complete and on the expiry of the second notice, treated the tenant's right-to-buy notice as withdrawn in January 2005. The tenant brought a claim for breach of the council's repairing obligations. She was awarded damages and an agreed order for specific performance was made. The tenant also sought a declaration that she was still entitled to exercise her right to buy by way of performance of the terms of the offer in 2003 or, alternatively, that she was entitled to damages for the loss of the right to buy on the basis that the council's failure to remedy the subsidence prevented her from raising a mortgage to enable her to complete the purchase.

The claims in respect of the right to buy failed at first instance and the tenant's appeal was dismissed. The Court of Appeal held that while the council, as the proposing purchaser's landlord, was under a continuing obligation to discharge its repairing obligations under the purchaser's secure tenancy and the tenant would be able to compel the performance of those obligations, it did not follow that the tenant also had a right to insist that completion of the purchase be deferred until all works of repair and structural rectification have been carried out by the landlord. Accordingly, the failure to repair was not an outstanding matter relating to the grant disentitling the council from serving the second notice to complete.

The damages claim failed on the facts, but would have failed in any event as the loss was too remote. In assuming the repairing obligations in the secure tenancy, the council was clearly taking on an obligation to compensate the tenant for the kind of loss likely to be occasioned in the ordinary course to her as an occupying tenant in consequence of any failure to perform those obligations.

However, the council was not thereby also assuming an obligation to compensate a tenant in remote circumstances in which, because of its failure to perform its repairing obligations, a tenant was unable to complete a purchase under the right-to-buy provisions. Any such purchase was not in the contemplation of the parties when the secure tenancy was granted.

Nuisance and Human Rights Act 1998

■ Dobson v Thames Water Utilities Ltd

[2009] EWCA Civ 28, 29 January 2009

Residents living near the defendant's sewage treatment works brought a group action alleging nuisance, negligence and breaches of article 8(1) of the convention in the operation of the works. They claimed to have been affected by odours and mosquitoes.

It was held as a preliminary issue that the principle in *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66, 4 December 2003 (namely, that liability in nuisance would be inconsistent with the statutory scheme for regulation of water and sewage undertakers, which also provided a fair balancing mechanism for the assessment of priority and enforcement so that there was no breach of the convention) did not preclude claims in nuisance involving allegations of negligence or claims under the Human Rights Act (HRA) 1998, where the exercise of adjudicating on those causes of actions was not inconsistent and did not involve conflicts with the statutory process under the Water Industry Act 1991.

It was not in dispute that the residents might recover compensation for breach of article 8 of the convention if their enjoyment of their homes had been impaired. However, there was no agreement about the basis on which any such damages might be assessed, nor about whether such damages might be payable in addition to any damages otherwise awarded at common law.

The Court of Appeal's judgment (on an appeal against the findings of a judge on trial of preliminary issues) contains a review of the correct approach to the assessment of compensation in nuisance and under article 8 and the HRA. The court held that an award of damages in nuisance to persons with a proprietary interest in a property will be relevant to the question whether or not an award of damages is necessary to afford just satisfaction under article 8 to a person who lives in the same household, but has no proprietary interest in the property. Therefore, despite the fact that damages for private nuisance are awarded as damage to 'land', it is highly improbable, if not inconceivable, that damages at common law will be exceeded by any award for breach of article 8. The award of damages at common law to a property owner will usually constitute just satisfaction for the purposes of HRA s8(3) and no additional award of compensation under that Act will normally be necessary.

Housing standards

■ Health and Safety Executive v Hussain

Stafford Crown Court,
20 February 2009

The defendant rented out 12 properties to private tenants. Nine of those properties had gas appliances fitted, but only two had current landlord gas safety certificates. On inspection, a number of the appliances were found to be 'immediately dangerous' and others were 'at risk'. The defendant pleaded guilty to specimen charges under Health and Safety at Work etc Act 1974 s3(2). He was fined £40,000 and ordered to pay £44,500 costs with 18 months' imprisonment to be served in default of payment.

Quantum

■ Gorman and Lane v Lambeth LBC

Lambeth County Court,
10 November 2008[11]

The claimants were long leaseholders of a one-bedroom, ground-floor flat in a converted, terraced Victorian house owned by the council. In 1994, the claimants reported cracking in the brickwork above their rear bay window due to subsidence. Council surveyors inspected the building on several occasions. As the cracking spread, consulting engineers were instructed. They reported in 2001 and prepared tender documents for underpinning works. However, no effective action was taken apart from the digging of inspection pits in the rear garden and the installation of wooden supports for the rear bay structure. In 2004, the council commenced consultation on underpinning works in keeping with LTA s20 but, again, took no action other than to install some further wooden structural supports. The claimants complained that the cracks in the walls made the whole flat cold, draughty and damp. They had been unable to sell the flat on the open market because of the condition of the structure. They had spent more than a decade making telephone calls, writing letters, receiving numerous visits from housing officers, surveyors and contractors and complaining, all to no avail. Eventually, the claimants could stand no more of the council's extensive delays in dealing with the subsidence and sold their flat in November 2005 to a developer for the sum of £85,000, which represented a substantial undervalue.

The claimants brought proceedings for damages to recover their loss on the sale and for other loss, damage, inconvenience and distress. A joint expert's report was obtained from a chartered surveyor. He concluded that the theoretical market value of the property in November 2005, had it been in good condition, without evidence of structural disrepair and structural movement, would have been £185,000. The claimants claimed:

- £100,000 for the loss on the sale of the property; plus
- general damages for inconvenience, anxiety and distress of £22,000;
- special damages of £1,500; and
- three years' interest exceeding £25,000.

The council disputed the claim up to the day of the trial, when it was settled at the door of the court for £120,000 plus legal costs.

■ Aslam v Ali

Birmingham County Court,
10 June 2009[12]

The tenant lived with his wife and eight children in a four-bedroom house. The property suffered from substantial disrepair from 2003. From 2003 to 2006, the central heating did not work except in two rooms, there were rotten and draughty windows in the kitchen and bathroom and penetrating damp and defective plaster in the kitchen and hallway. As a result of the lack of heating, the entire family had to sleep in just two rooms in the winter months and use extra blankets to keep warm. The boiler was replaced in 2006, the tenant changed the windows to the kitchen and bathroom and replaced the French doors to the patio, but the other defects remained. The judge awarded damages at 50 per cent of the rent of £60 per week from 2003 to 2006 and 33.3 per cent of the rent from 2006 to 2009. The judge also awarded special damages which included the costs of the blankets and of replacing the windows and doors.

■ Smyth v Farnworth

Wigan County Court,
3 September 2009[13]

A private tenant suffered water penetration to a conservatory throughout a tenancy, a defective boiler from July to November 2007, a missing gutter and damage to the bedroom ceiling following a promptly repaired leak. In addition, the tenant suffered a five-week period of intimidation during which pressure was put on the tenant, including at least one threat of removal.

The judge awarded damages of:

- £1,000 per annum for the leak to the conservatory;
- £1,000 per annum for the defective boiler; and
- £2,200 for the other defects making a total award of £4,700 general damages.
- £500 was also awarded for the intimidation on the basis of a breach of the covenant of quiet enjoyment.
- £5,000 was awarded to the tenant for the fact that her depression had been exacerbated by the state of the property and the intimidation which, although short in duration, had had an effect on the tenant for a much longer period of just over two years.
- £3,500 was awarded to her son for exacerbation of his asthma for a two-year period.

OMBUDSMEN'S REPORTS

Local Government Ombudsman

Complaint

■ Havering LBC

08 005 922,
16 June 2009

The complainant was a private sector tenant who accepted the tenancy of a council flat. At the date the tenancy started there were problems with the gas supply, major gas leaks and as a result no heating or hot water. It was two months before these matters were remedied during which time the tenant was 'given the run around' by the council's ALMO and had to pay the rent on his private flat as he had transferred his housing benefit claim to the council flat at the start of the tenancy.

The Ombudsman found maladministration in that the flat had not been in a lettable condition, the council had unreasonably delayed in addressing the problems and had unreasonably sought to recover the housing benefit the complainant had claimed in his

new property when it was aware that he could not move in. The Ombudsman recommended that the council pay £1,550 compensation for the two months' rent paid for the private rented accommodation, plus the housing benefit the tenant would have received between the start of the tenancy and the date a proper gas supply was provided, and £350 compensation for the time and trouble in pursuing the complaint.

Housing Ombudsman Service

■ Complaint reference 01415 in relation to an assured tenant

1 March 2009

The tenant, who was disabled and particularly susceptible to cold and moist conditions, reported a problem with an ongoing leak from the upstairs flat in June 2006 and a number of other defects in January 2007. He was most concerned about disrepair to the windows which made the property draughty. Orders were raised to repair the damaged ceiling and ease and adjust the windows in two rooms with a target date of 5–20 days. However, the works in respect of the windows were wrongly cancelled on the basis that the windows needed replacing. The works were not reordered and completed until October 2007, after the appointment of a senior tenant liaison officer.

The Ombudsman decided that neither the landlord's offer of £250 compensation nor the tenant's claim for his entire rent from January to May 2007 was proportionate to the inconvenience experienced by the tenant. He recommended payment of 50 per cent of the rent for a four-month period as it was clear that the tenant had been unable to use his bedroom or kitchen in the winter months.

■ Complaint reference 27394 in relation to an assured tenant

1 March 2009

The tenant reported damp in May 2005 in respect of which his landlord fitted a ventilation system to deal with condensation. In January 2006, the landlord ordered that the whole flat be treated for mould. In February 2006, the local authority informed the landlord that in addition to mould there was evidence of damp in the living room. The landlord inspected again in February 2008. Although no record of the inspection was kept, the tenant was advised that the problem was condensation not damp. In April 2008, the local authority inspected again and advised that while there was clearly mould growth, there was also a possibility of rising or penetrating damp. On this basis it was recommended that the tenant be offered a management move. On 16 April 2008, an external contactor found damp throughout the property and recommended the injection of a chemical damp-proof course, but no works were carried out until after the tenant moved out of the property in June 2008.

At the hearing of the tenant's complaint, the landlord maintained that the problem was attributable to the tenant's lifestyle and suggested that condensation was the problem. The complaints panel decided that it could not reach a conclusion, despite having access to the independent report, but recommended a goodwill payment of £250.

The Ombudsman found maladministration. The landlord had been aware of the damp in the property since February 2006 but had advised the panel that the problem was one of condensation, did not acknowledge the findings of external inspections, and did not consider the tenant's request for compensation for damage to his belongings. The Ombudsman ordered the landlord to pay a further £280 compensation to the tenant, which represented £10 per month from February 2006 to when the tenant moved out in June 2008.

The landlord challenged the finding of maladministration as it did not consider that the panel's final decision and recommendations were within the Ombudsman descriptions of maladministration. The Ombudsman noted that in deciding whether or not there has been maladministration, the Ombudsman considers both the events that initially prompted a complaint and the landlord's response through its complaints procedure. The extent to which a landlord has recognised and addressed any shortcomings, the appropriateness of any steps taken to offer redress and the action taken to address any systemic failures are therefore as relevant as the original mistake or service failure.

Comment: The report does not identify the level of the tenant's rent so it is not possible to cross-check the damages award with the rent as suggested in *Wallace v Manchester City Council* [1998] EWCA Civ 1166; [1998] 30 HLR 1111 and *English Churches Housing Group v Shine* [2004] EWCA Civ 434; [2004] HLR 42. However, an award of £10 per month, which only equates to £120 per annum, is clearly far less than would have been awarded in county court proceedings, given that over 20 years ago, in *Davies v Peterson* (1989) 21 HLR 63, Russell LJ held that 'the sum of £250 [for 12 months' disrepair] must … be regarded, when awarded by way of compensation for inconvenience, anxiety and discomfort, as little more than nominal'. This case highlights the continuing problem of low awards of compensation being made by Ombudsmen.

1 Available at: www.communities.gov.uk/documents/statistics/pdf/1133548.pdf.
2 Available at: www.audit-commission.gov.uk/SiteCollectionDocuments/AuditCommissionReports/NationalStudies/betterlives9sept2009rep.pdf.
3 Available at: www.communities.gov.uk/documents/statistics/pdf/1072658.pdf.
4 Available at: www.communities.gov.uk/documents/statistics/pdf/1346262.pdf.
5 Available at: www.lawcom.gov.uk/housing_disputes.htm.
6 Available at: www.judiciary.gov.uk/about_judiciary/cost-review/preliminary-report.htm.
7 Available at: www.justice.gov.uk/consultations/docs/legal-aid-funding-reforms.pdf.
8 Available at: www.communities.gov.uk/documents/housing/pdf/1379446.pdf.
9 Available at: www.tenantservicesauthority.org/upload/pdf/Statutory_consultation_web.pdf.
10 Charlotte Collins, Anthony Gold solicitors, London and Michael Paget, barrister, London.
11 Tim Powell, Powell Forster solicitors, London and Nik Nicol, barrister, London.
12 Saeed Ashiq, Community Law Partnership, solicitors, Birmingham.
13 Sonia Birdee, barrister, Manchester.

Beatrice Prevatt specialises in housing law with the Housing Team at Garden Court Chambers. She is grateful to the colleagues at notes 10–13 for transcripts and case notes.