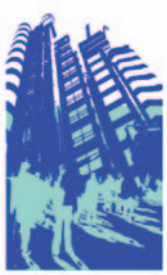
Housing repairs update 2011 – Part 1



In this annual review, Beatrice Prevatt details policy, legislation and case-law concerning housing disrepair from January 2011 to date. Part 2 of this article will be published in January 2012 *Legal Action*.

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 coalition government's target that all social housing should meet the decent homes standard by the end of 2010 was not met.

On 1 January 2011, the Parliamentary Office of Science and Technology produced a briefing looking at the impact of poor housing on health and examining the implications for housing policy.[1] This noted that although the coalition government projected that 92 per cent of homes would be of decent standard by the end of 2010, the Building Research Establishment put the number at 70–80 per cent, suggesting that the government's projection failed to include homes where the tenants refused renovations or those that became non-decent after 2001.

On 17 February 2011, the government announced the outcome of the bid round for further funding to help councils achieve their decent homes targets. Over four years, nearly £1.6bn is to be divided among 46 local authorities and arms length management organisations to enable them to bring a further 150,000 homes up to the decent homes standard. Another 24 stock transfer organisations (mainly housing associations) will also receive £500m of gap funding over the same period to contribute towards the cost of bringing poor value housing transferred from local authorities up to the decent homes standard.

On 5 July 2011, the *English Housing Survey: housing stock report 2009* was published, which reviews the state of the housing stock.[2] Among other findings, the report reveals that in 2009 some 20 per cent (ie, 4.2m) households lived in homes with substantial disrepair, and there has only been a modest improvement in the proportion of the stock with problems of damp (ie, from ten per cent in 2001 to eight per cent in 2009) primarily because the incidence of serious condensation and mould has not changed from four per cent of all dwellings. The incidence of damp problems is much higher for private rented dwellings and local authority dwellings (ie, 15 per cent and 12 per cent respectively).

Review of civil litigation costs

In November 2010, the Ministry of Justice (MoJ) issued a consultation paper in relation to the implementation of some of Jackson LJ's recommendations on the reform of civil costs.[3] On 29 March 2011, the government published its response.[4] This included the following:

- A decision to move forward with the abolition of the right to recover success fees and after-the-event (ATE) insurance from the losing party.
- An increase of ten per cent in general damages for all claimants.
- Qualified one-way costs shifting (QOCS) in personal injury claims.
- Amending Part 36 of the Civil Procedure Rules (CPR) to equalise the incentives between claimants and defendants to make and accept reasonable offers.
- A new test of proportionality in costs assessment.

The government has made no proposals to extend QOCS to housing disrepair claims despite Jackson LJ having indicated that there was a strong case for this. The failure to do so and the abolition of the right to recover success fees from the losing party may undermine the use of conditional fee agreements (CFAs) in housing disrepair damages claims at a time when it is also proposed that public funding will be removed from such claims.

The reforms which require primary legislation, such as the abolition of the right to recover success fees, are being taken forward through provisions in the Legal Aid, Sentencing and Punishment of Offenders Bill, known as the Legal Aid Bill. The Civil Justice Council (CJC) agreed to form and support an expert working group to help develop practical proposals to assist with the implementation of secondary legislation in relation to QOCS, Part 36 and proportionality. In October 2011, delegates discussed the options of the paper produced by the working group.[5] The MoJ will now consider whether or not additional and wider consultation on the proposals is necessary and, if so, what form it should take.

Legal Aid, Sentencing and Punishment of Offenders Bill

The Legal Aid Bill, which was published at the same time as the government's response to the consultation on the proposals for the reform of legal aid (see above) in June 2011, largely enacts the initial proposals in order to achieve a £350m cut in legal aid by 2013/14.[6] The bill proposes that disrepair claims will remain in scope in relation to the removal or reduction of a serious risk of harm to the health or safety of individuals (Sch 1 Part 1); in addition, 'harm' is defined as including temporary harm and 'health' is defined as including mental health.

Accordingly, only claims where remedial works are sought will be in scope, and damages-only claims will have to be funded privately or under a CFA save if they are brought as a counterclaim in rent arrears possession claims, where they will remain in scope as services in relation to the eviction from an individual's home (Sch 1 Part 1). So far, the only concessions in relation to housing disrepair claims are that the exclusion for claims for breach of statutory duty in Sch 1 Part 1 has been disapplied so that claims based on, for example, the Defective Premises Act (DPA) 1972 will now be in scope, and the exclusion in relation to damage to property in respect of possession counterclaims has been lifted.

Localism Act 2011

The Localism Act 2011, which received royal assent on 15 November 2011, includes provisions to extend the repairing obligation in Landlord and Tenant Act (LTA) 1985 s11 to flexible and assured tenancies granted by registered providers with a fixed term of seven years or more (section 166), as well as provisions in relation to housing regulation (see 'Ombudsman's complaints' below).

During the passage of the bill, the authors of *Repairs: tenants' rights* took the opportunity to seek a number of other amendments in relation to housing disrepair.[7] The amendments sought, among other things, to widen the scope of LTA s11 to cover design defects and/or to make landlords liable to

keep their premises fit for purpose. The proposed amendments were not accepted by the government on the basis that the current division of responsibilities and obligations between landlord and tenant is the right one and that a mechanism exists already to take action against landlords who fail to provide safe accommodation, namely, the housing health and safety rating system under the Housing Act (HA) 2004. See also page 21 of this issue.

Expert's fees

For publicly funded cases after October 2011, the maximum experts' fixed fees or hourly rates are as set out in Community Legal Service (Funding) (Amendment No 2) Order 2011 SI No 2066 Sch 6 s1. The figure for surveyors is £50 per hour. There is no higher London rate as for some other categories of experts. This is the maximum allowable rate subject to the Legal Services Commission having discretion to authorise that it be exceeded in 'exceptional circumstances [namely] where the expert's evidence is key to the client's case and either (a) the complexity of the material is such that an expert with a high level of seniority is required; or (b) the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence' (Sch 6 s2(2)).

Comment: It remains to be seen whether or not it will be possible to get surveyors to produce reports at this hourly rate. If not, the ability of publicly funded claimants to bring actions for housing disrepair will be seriously undermined, even if theoretically such cases remain in scope.

Housing disrepair pre-action protocol

The CJC working group that was conducting a review of the effectiveness of the housing pre-action protocols, including the disrepair protocol, has been suspended indefinitely as part of a cost-cutting exercise.

Small claims track

On 29 March 2011, the government launched a consultation exercise on proposals to reform the handling of cases in the county court, which included plans to increase the small claims limit to £15,000 save in respect of personal injury and housing disrepair cases where remedial works are sought; in these cases, it was proposed to retain the £1,000 small claims limit.[8] The consultation paper also proposed that there should be fixed recoverable costs in fast track cases and a limit on the pre-trial costs that may be recovered. The deadline for responses was 30 June 2011. The government's response to the consultation paper was due to be published in October 2011, but it is still awaited.

Comment: Most housing disrepair damages claims are worth less than £15,000, so the proposed increase in the small claims limit would mean that effectively these could no longer be pursued with legal representation given that neither public funding nor assistance by way of CFAs would be available, as costs would no longer be recovered.

Tenant Services Authority

Although the Tenant Services Authority (TSA) is to be abolished on 1 April 2012 and its regulatory functions transferred to the Homes and Communities Agency, until then the authority retains and exercises these functions. On 27 June 2011, the TSA announced the adoption of a new approach to social housing inspection following the conclusion of its consultation.[9] Routine inspections of landlords and the key lines of enquiry, which were previously used to measure performance, are abolished. Inspection will now only be used to establish whether or not providers are compliant with TSA standards and regulatory requirements where the authority has reason to believe that a provider may be failing seriously in this. The TSA will commission inspections by establishing a brief that addresses the specific concerns identified in relation to the published authority's standards and regulatory framework. These new arrangements replace the transitional arrangements for social housing inspections that have been in place since November 2010.

In July 2011, a consultation paper was published on new draft directions to be issued to the Social Housing Regulator for England that includes a direction on the quality of accommodation.[10] The proposed new draft directions will replace all those directions issued to the regulator by the last government. They require that the regulator, in setting the standard in relation to the quality of accommodation, must have regard to the decent homes guidance, ie, *A decent home: definition and guidance for implementation*.[11] In addition, the regulator must set the standard with a view to achieving, as far as possible, that accommodation meets the decent homes standard and that accommodation which is at the standard set out in the decent homes guidance is maintained by the registered provider at that standard. The draft directions also propose that the regulator may agree a temporary period with the registered provider, during which the requirement of the quality of accommodation standard need not be met fully, where the application of the standard would not be reasonable.

The consultation closed on 29 September 2011. Once the responses have been received, new directions will be issued to the regulator, and then consultation on the content of the standards will take place.

Tenant cashback scheme

The proposed new directions to the social housing regulator also include a revised tenant involvement standard which gives opportunities to tenants, with the agreement of landlords, to be involved in the management of housing repair and maintenance services, and to share in any savings made as a result.

The government is calling this a tenant cashback scheme for social housing tenants in England. Currently, it is piloting a model to work through the detailed practicalities of how the scheme will work in practice.

Ombudsman's complaints

The Localism Act (see above) provides that local housing authorities will become registered providers, and therefore will fall within the remit of the Housing Ombudsman. As a result, complaints against local authorities in their role as social landlords will, from 1 April 2013, be considered by the Housing Ombudsman rather than by the Local Government Ombudsman. The Localism Act also provides that the secretary of state will have the ability to enable the Housing Ombudsman to apply to a court to have his determinations enforced when necessary.

Originally, it was proposed in the Localism Bill that tenants of registered providers would no longer have direct right of access to the ombudsman; instead, they would have to request that their complaints be referred to the ombudsman by a 'designated person', namely, an MP, a local councillor or a recognised Tenant Panel. A referral to the ombudsman would be made after the complaint had been dealt with locally, first, through the internal procedure of the landlord, and then by the designated person. However, direct access is now to be retained.

In the House of Lords, the government brought forward amendments to enable social housing tenants to complain to a new Housing Ombudsman even if their complaints are not referred by a designated person, but only if:

- more than eight weeks has passed since the last step in the complaints procedure; or
- the complaint has been the subject of written confirmation that it need not be referred or referral has been refused in writing (Localism Act s180).

CASE-LAW

Funding and CFAs

■ Sibthorpe and Morris v Southwark LBC

[2011] EWCA Civ 25, 25 January 2011

In settlement of a housing disrepair claim, the council agreed to carry out necessary works, to pay £10,000 damages and to meet the tenant's legal costs. The tenant had entered into a CFA in which her solicitors had agreed to indemnify her for the landlord's legal costs if she lost the case. In those circumstances, the council refused to pay any costs on the ground that the CFA breached the rule against champerty and was void as it was unlawful for a legal adviser to conduct litigation for a client on terms which gave it a financial interest in the outcome, unless legislation permitted the particular terms.

The Court of Appeal upheld an order for the assessment of the costs on the basis that the indemnity was not champertous. The various judicial definitions of a champerty envisaged a gain if the action concerned succeeded, and while there may also be a loss if the action failed, what was different about the indemnity was that there was just a loss if the action failed. To hold the indemnity in the present case champertous would involve extending the law of champerty at a time when it was apparent from judicial observation that its scope was to be curtailed rather than extended.

Comment: It may be that such indemnities become more common once the ability to recover ATE insurance is abolished, as clients may not wish to risk having to pay their landlord's costs if they lose the case.

Practice and procedure

■ Millharbour Management Ltd and others v Weston Homes Ltd and another

[2011] EWHC 661 (TCC), 22 March 2011

The claimants were several long leaseholders in a huge block of flats built by the defendants. The claimants claimed that there were structural problems with the block and significant disrepair. They sought a direction that two claimants (one an original leaseholder and the other an assignee) should be treated as bringing test cases on behalf of all the other leaseholders rather than requiring every lessee to bring a claim. The application was allowed. The judgment contains a useful review of the possibility of tenants maintaining group actions or class actions under the CPR.

■ Williams and another v Hinton and another

[2011] EWCA Civ 1123, 14 October 2011

In a possession action brought by private landlords, the tenants counterclaimed for disrepair and for personal injury that they had suffered by reason of the poor condition of the property. By the date of trial, the tenants had vacated but on their counterclaim they were awarded damages of over £12,000 plus costs. The landlords, who had not attended the hearing, appealed. They complained that the court ought not to have proceeded in their absence nor relied on an expert's report because it had not contained the mandatory declaration required by CPR 35 Practice Direction (PD).3.

The Court of Appeal dismissed the appeal. It held that the landlords ought to have applied to set aside the order under CPR 39.3 rather than having appealed, but in any event the judge had been entitled to proceed in their absence on the facts of the case. The judge had also been entitled to rely on the expert evidence as the expert had made a declaration in his report complying substantially with the essence of the PD, even if he did not follow the precise wording and state that the report was his 'true and complete professional opinion' (para 12).

Liability

Contractual liability

■ Grand v Gill

[2011] EWCA Civ 554, 19 May 2011

A tenant rented a two-bedroom flat from her landlord, who was the long leaseholder of the flat. The boiler to the flat was defective from 2004 until 2007, when it was replaced, and the flat was affected by extensive dampness and mould growth. The condensation had been aggravated by the ingress of water from a defective roof and guttering, but responsibility for these defects lay not with the tenant's landlord but with the head landlord. There was also some damaged plasterwork caused by the penetrating dampness. The tenant sought damages for disrepair. The trial judge disallowed a significant element of compensation because the dampness was largely condensation dampness arising from defective design.

The tenant appealed. She contended, in particular, that the landlord was liable for the damaged wall and ceiling plaster as it was part of the structure and was in disrepair.

The Court of Appeal disapproved a High Court ruling in *Irvine v Moran* (1992) 24 HLR 1 that, in residential accommodation, plaster was a mere decorative finish. The court held that plaster was 'a smooth constructional finish to walls and ceilings to which the decoration can then be applied, rather than a decorative finish in itself' (para 25). Accordingly, it held unanimously that plaster was part of the structure and, therefore, was covered by the obligation to repair contained in LTA s11. The tenant's damages were increased as a result.

■ Daejan Properties Ltd v Campbell

(2011) 1 November, Ch D

A tenant's lease of a maisonette on the third and fourth floors of a six-storey house defined the maisonette plus the staircase leading up to it as 'the premises'. The lease provided at clause 3.3 that the landlord would keep the roof and the outside walls of the premises in good condition, and at clause 2.5 that the owner of the maisonette would contribute two-fifths of the landlord's expenses in so doing. On the landlord's application for a declaration, it was held that the wording of clause 3.3 could not have been what the parties intended, as if it was correct there was no covenant from the landlord to keep the building in repairs because the clause only related to the roof and walls of the maisonette rather than to the house. Taking into account all factors, it was held that the word 'house' would be substituted for the word 'premises' in clause 3.3.

■ Harrison and others v (1) Shepherd Homes Ltd (2) National House Building Council (3) NHBC Building Control Services Ltd

[2011] EWHC 1811 (TCC), 11 July 2011

This was a claim by homeowners against the builder of their houses. The homes had been built on foundations that were not supported by adequate piling. Some owners claimed for breach of contract under the express or implied terms of the contract of sale. The court held that, on their proper construction, the sales contracts included an express obligation to design the houses with proper skill and care and an obligation to complete the works so that they were fit for habitation. Even if there was no express obligation, the usual terms concerning the design being carried out with reasonable skill and care and in relation to fitness for habitation would be implied under the Supply of Goods and Services Act 1982 and at common law. If the contract terms had been capable of being construed to exclude or restrict the liability of the construction company, they would have been unreasonable and unenforceable under the Unfair Contract Terms Act (UCTA) 1977. The construction company was, therefore, liable in breach of contract. (In respect of the claims under the DPA, see 'Tortious liability' below.)

Service charges

■ Daejan Investments Ltd v Benson and others

[2011] EWCA Civ 38, 28 January 2011

The freeholder company of a block of flats commissioned maintenance works and sought to recover a share of the costs from five leaseholders through service charges. The freeholder company failed strictly to comply with consultation requirements; it provided the tenants with only one of four tenders for the works before serving notice that effectively the contract had been awarded to the contractor and the consultation process had ended.

A Leasehold Valuation Tribunal (LVT) held that it was not reasonable to dispense with the consultation requirements under LTA ss20 and 20ZA and, as a result, the freeholder company could recover only nominal sums of £250 per leaseholder, instead of the £270,000 it claimed. This decision was upheld by the Upper Tribunal (Lands Chamber).

The Court of Appeal dismissed a further appeal by the freeholder company. It held that a proper consultation process was of the essence in the statutory scheme, which was devised to protect the interests of tenants. Curtailment of consultation involved substantial non–compliance with the consultation requirements, although dispensation might be granted in certain situations where the integrity or importance of the consultation process was not undermined, for example, where there was a need to undertake emergency works or where there had been a minor breach of procedure which caused no prejudice to the tenants. In exercising the dispensatory discretion under section 20ZA(1), significant prejudice to tenants was a primary consideration; however, the financial effect of the grant of refusal of dispensation was irrelevant. It was impossible to view the breach of the consultation requirements as a technical, minor or excusable oversight.

■ Brent LBC v Shulem B Association Ltd

[2011] EWHC 1663 (Ch), 29 June 2011

The council planned major works to five blocks of flats on one of its housing estates. The company held 15 leases of flats in the blocks. The council gave notice in March 2004 of the intended works and the estimated cost. In February 2006, the council invoiced the company for major works carried out in 2003/2004 based on the estimated costs. In December 2006, the council demanded the actual amount incurred in respect of the major works, which was less than the estimate. When the sums were left unpaid, the council sued for the actual amount due. The company applied to strike out the claim on the basis that the relevant costs were incurred more than 18 months before December 2006 and, therefore, were irrecoverable as a result of LTA s20B(1). This application was refused by a county court judge on the basis that although the February 2006 letter was not a valid demand under the terms of the lease or under section 20B(1), it had constituted relevant notification for the purposes of section 20B(2).

The High Court granted the company permission to appeal in order to deal with a series of seemingly inconsistent decisions of courts and tribunals about service charge demands. The High Court then allowed the appeal. The demand in February 2006 was not in the form required by the leases themselves, which allowed the authority to demand a due proportion of actual expenditure. It was not, therefore, a demand for payment of the service charge within section 20B(1). Nor did the letter of February 2006 comply with the terms of section 20B(2) when it did not purport to state what the actual costs were and included a statement that the actual costs might be greater than the estimated costs referred to and that the local authority would wish to recover any such excess.

■ Freeholders of 69 Marina, St Leonards-on-Sea – Robinson, Simpson and Palmer v (1) Oram (2) Ghoorun

[2011] EWCA Civ 1258, 8 November 2011

The lessees were liable under their lease to contribute towards their landlords' costs of repairing the common parts of the relevant building (clause 1(b)). They were also liable to pay all expenses, including solicitors' costs incurred by the landlords incidental to the preparation and service of a notice under Law of Property Act 1925 s146; or incurred in contemplation of proceedings under section 146 or section 147; and incurred incidental to the service of all notices and schedules relating to wants of repair of the premises (clause 3(12)).

The lessees complained that the amount of service charge sought in respect of repairs was too high. The landlords issued proceedings in the LVT: it assessed the amount payable and made no order in relation to costs. The lessees failed to pay the sums found to be due, so the landlords issued proceedings in the county court. The district judge ordered the lessees to pay the sums found to be due by way of service charge and interest. She also held that they were liable to pay the costs incurred by the landlord in connection with the proceedings before the LVT. The landlords then served a section 146 notice in respect of the unpaid service charge.

The district judge's decision was upheld by the circuit judge and the Court of Appeal. Given that the determination of the LVT and a section 146 notice were cumulative conditions precedent to the enforcement of the lessees' liability for the landlords' costs of repair as a service charge, it was clear that the landlords' costs before the LVT fell within the terms of clause 3(12). In so far as any of the costs may not have been strictly costs of the proceedings, they appeared to have been incidental to the preparation of the requisite notices and schedules.

Tortious liability

■ Robinson v PE Jones (Contractors) Ltd

[2011] EWCA Civ 9, 18 January 2011

The claimant agreed to buy a house that the defendant was constructing. The parties' written contract matched the builder's liability to the terms of the normal National House Building Council agreement and expressly excluded any liability beyond such agreement. Some 12 years after completion, a gas safety check revealed that the chimney flues had been constructed incorrectly and would require around £35,000 remedial work. A claim in contract was out of time, so the claimant sued in tort alleging negligent construction.

The Court of Appeal held that a builder's liability for a defect in a building causing economic loss was confined to a contractual liability only. Even if there had been some greater liability in tort, the exclusion of that liability had been reasonable for the purposes of UCTA ss2 and 3.

■ Jenson and Jenson v Faux

[2011] EWCA Civ 423, 13 April 2011

The appellant carried out substantial works to a house in 2003/2004 for its then owner. Over £400,000 was spent converting the house from two storeys into what were said to be '[four] storeys of luxury accommodation'. Later the property was bought by Mr and Mrs Jenson. They claimed that it was defective because of water penetration to the basement; the couple brought a claim for damages relying on DPA s1 on the basis that the work had not been done in a workmanlike or professional manner. The DPA applies to work 'for or in connection with the provision of a dwelling' (section 1(1)).

The Court of Appeal struck out the claim on the basis that there was no reasonable prospect of demonstrating successfully that the work had produced a new dwelling in terms of the identity of the house being

changed. The mere enlargement of an existing dwelling did not fall within the scope of DPA s1. Although there was a gray area within which it would be genuinely arguable that a dwelling had changed to the extent that it had a different identity, extension or refurbishment works would have to be much more substantial than in the instant case; the extent and cost of the work would not be decisive. There might be cases where a small amount of work would be required to create a separate one-floor dwelling which would fall within DPA s1, but there could be very extensive works to a house which would not change its identity.

■ Harrison and others v Shepherd Homes Ltd and others

[2011] EWHC 1811 (TCC)
11 July 2011

This was a claim by homeowners against the builder of their houses. The homes had been built on foundations which were not supported by adequate piling. Some owners claimed for breach of contract. However, some owners were subsequent purchasers and were unable to bring contractual claims. All the owners made claims under DPA s1. The owners claimed that the homes would have to be demolished and rebuilt, with the owners decanted while the work was carried out.

The judge rejected that claim but awarded considerable damages under the DPA in relation to diminution in value and other loss suffered. The judge held that there was no breach of the DPA unless the dwellings were not fit for human habitation. The question of whether or not a dwelling was fit for habitation was one of fact and degree. Here, there were defects in the foundations which had caused cosmetic defects in the properties. While the damage to the properties had not rendered them unfit for habitation, on balance, the judge considered that any significant defects in foundation were properly matters which would be said to give rise to a lack of fitness. The properties were, therefore, unfit as regards the foundation work, which had not been done in a workmanlike or professional manner.

■ White v Quadrant Brownswood Tenants Co-op

[2011] EWCA Civ 239,
18 January 2011

The tenant brought an action for damages against his landlord for breach of repairing obligations relating to dampness in a basement flat. The landlord denied liability, claiming that the dampness had been caused by the tenant: either from a washing machine leak or by condensation. The trial judge upheld a small part of the claim and awarded £50 in damages. Both sides appealed to the Court of Appeal. The tenant was granted permission to appeal on the papers against the judge's conclusion that he was not entitled to recover any damages under DPA s4 for damage to his clothing, which hung in the wardrobe where the wall was damp. The landlord obtained permission to appeal on costs only and made a renewed application for permission to appeal on liability.

The Court of Appeal refused the landlord's application. On the evidence before him, the judge had been entitled to find that a small area of dampness had been caused by a defect in an external rainwater pipe for which the landlord bore the repairing obligation.

■ (1) Jones (2) Lovegrove v (1) Ruth (2) Ruth

[2011] EWCA Civ 804,
12 July 2011

The parties were adjoining homeowners. The defendants decided to extend and develop their property. The work, which should have taken a year at most, extended over several years between 2002 and 2010. There was considerable nuisance and annoyance caused, and trespass on the claimants' property both during the works and in the end result. The first claimant was made ill by the events and the conduct of the defendants and their workmen: she suffered severe back pain brought on by anxiety and depression. The judge awarded £30,000 damages for loss of amenity, £6,000 for harassment and £45,000 in lieu of an injunction for the ongoing trespass. No award was made in respect of personal injury as the judge found that it was not proven that the injuries suffered by the first claimant were attributable to her seeing damage to the property and reasonable foreseeability of the injury is necessary in harassment as it is in negligence. Both parties appealed.

The Court of Appeal decided that the judge had been wrong not to award damages for the personal injury caused by the harassment as the tort of harassment is purely statutory; in addition, Protection from Harassment Act 1997 s3 specifies no conditions for the recovery of damages beyond the requirement that the harassment should have caused the complained-of injury or loss. The Court of Appeal awarded £28,750 general damages and £115,000 for loss of earnings. On a cross appeal, the £45,000 award was reduced to £15,000 on the basis that this was the likely cost of a licence to do the work, but an order that the defendants pay indemnity costs was upheld.

1 *Housing and health*, POST Note 371, available at: www.parliament.uk/business/publications/research/briefing-papers/POST-PN-371.
2 Available at: www.communities.gov.uk/documents/statistics/pdf/1937212.pdf.
3 *Proposals for reform of civil litigation funding and costs in England and Wales: implementation of Lord Justice Jackson's recommendations*, available at: www.justice.gov.uk/consultations/docs/jackson-consultation-paper.pdf. The consultation closed on 14 February 2011.
4 *Reforming civil litigation funding and costs in England and Wales – implementation of Lord Justice Jackson's recommendations: the government response*, available at: www.justice.gov.uk/downloads/consultations/jackson-report-government-response.pdf.
5 *CJC working group on technical aspects of Jackson implementation: options for proportionality, Part 36 offers and qualified one-way costs shifting*, available at: www.judiciary.gov.uk/Resources/JCO/Documents/CJC/CJC%20Working%20Group%20on%20Technical%20Aspects%20of%20Jackson%20Implementation.pdf.
6 *Reform of legal aid in England and Wales: the government response*, available at: www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf.
7 Jan Luba QC, Deirdre Forster and Beatrice Prevatt are the book's authors. See author's endnotes for more information.
8 *Solving disputes in the county courts: creating a simpler, quicker and more proportionate system. A consultation on reforming civil justice in England and Wales*, available at: www.justice.gov.uk/downloads/consultations/solving-disputes-county-courts.pdf.
9 See: www.tenantservicesauthority.org/server/show/ConWebDoc.21364.
10 *Implementing social housing reform: directions to the Social Housing Regulator. Consultation*, available at: www.communities.gov.uk/documents/housing/pdf/1936126.pdf.
11 Available at: www.communities.gov.uk/publications/housing/decenthome.

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