Housing repairs update 2012

In this annual review, Beatrice Prevatt details policy, legislation and case-law concerning housing disrepair from November 2011 to date.

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.

On 5 July 2012, the *English Housing Survey: HOMES 2010* was published, which reviews the state of the housing stock.[1] Among other findings, it reports that the proportion of dwellings failing the decent homes standard has declined steadily from 35 per cent in 2006 to 27 per cent in 2010. The largest improvements were evident in the local authority sector. The main reason for the improvements has been the reduction in the proportion of homes failing the thermal comfort criterion (from 17 per cent to ten per cent) over this period. Of the 5.9 million non-decent homes in 2010, 1.3 million (21 per cent) failed because of disrepair.

The proportion of homes with damp problems fell from ten per cent in 2001 to seven per cent in 2010, due mainly to a fall in the incidence of problems caused by penetrating damp. The private rented sector showed the most noticeable improvement from over 21 per cent of homes affected in 2001 to around 13 per cent in 2010. Serious condensation and mould growth were the most common type of damp problems, and affected four per cent of homes in 2010. This percentage has remained almost constant since 2001, which may appear surprising given that, between 2001 and 2010, considerable progress has been made in improving heating and insulation in dwellings. However, the report suggests that this may be because of marked fluctuations and increases in fuel costs, which would be likely to increase the incidence of condensation because households may struggle to heat their homes adequately and so may be more reluctant to use extractor fans or to open windows.

On 28 September 2012, the UK coalition government's Spending Review confirmed the earlier Budget announcement of £982.7 million in allocations to be shared among 41 local authorities to tackle non-decent homes for the years 2013/14 and 2014/15; in addition, £443 million is being allocated through the Homes and Communities Agency (HCA) to council landlords across England. The Greater London Authority will distribute £540 million to councils in the capital.

Legal aid: funding reforms

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, which received royal assent on 1 May 2012, puts the government's proposals for reform of legal aid into effect from 1 April 2013. Disrepair remains in scope for tenants and lessees facing a 'serious risk of harm to the health or safety of the individual' (Sch 1 Part 1 para 35(1)): the 'harm' may be temporary, and 'health' includes physical and mental health (Sch 1 Part 1 para 35(4)).

However, many disrepair claims will be out of scope, in particular, damages-only claims. These will have to be funded privately or under a conditional fee agreement (CFA), save if they are brought as a counterclaim in rent arrears possession claims, when they will remain in scope as civil legal services in relation to the eviction from an individual's home (Sch 1 Part 1 para 33(1)(b)).

The exclusions for claims for breach of statutory duty and in relation to damage to property have been disapplied for disrepair claims (Sch 1 Part 1 para 35(2) and Sch 1 Part 2 paras 6 and 8), so that claims based, for example, on the Defective Premises Act (DPA) 1972 will now be in scope; however, the exclusion in relation to negligence claims remains. There is no specific exclusion in respect of claims in nuisance, so it appears that actions for pest infestations and water ingress from other flats let by the same landlord will be in scope provided they pose a serious risk of harm to the health and safety of the tenant, or a member of his/her family or are raised by way of a counterclaim in rent arrears possession claims.

Sections 44 and 46 of the LASPO Act end the recoverability of success fees and insurance premiums from the losing defendant in cases funded by way of CFAs. The Act also provides for regulations to prescribe a cap on the success fees expressed as a percentage of specified damages. Previously, the government indicated that the success fee would be capped at 25 per cent in personal injury cases.

Uplift in damages

It had been proposed that general damages in personal injury cases should be increased by ten per cent to compensate claimants partially for the reduction in the damages they will receive as a result of the success fee in CFAs being taken from their damages. In *Simmons v Castle* [2012] EWCA Civ 1039, 26 July 2012, the Court of Appeal ordered that general damages awards should increase by ten per cent for any judgment delivered after April 1 2013. While *Simmons* was a personal injury case, the court noted that this uplift should apply to all claims in nuisance or tort if the tort causes suffering, distress or inconvenience to any individual. This ruling appeared to exclude contractual claims, including disrepair claims under Landlord and Tenant Act (LTA) 1985 s11.

Following representations, the judgment was revised to clarify that the ten per cent uplift is to be given to general damages in all civil claims for 'four types of damage in relation to both tort and contract cases, namely "pain and suffering and loss of amenity", "physical inconvenience and discomfort", "social discredit", and "mental distress"' (*Simmons v Castle and Association of British Insurers and Association of Personal Injuries Bar Association (interested parties)* [2012] EWCA Civ 1288, 10 October 2012 paras 48 and 50). This judgment also clarified that the ten per cent uplift would not apply to claims funded under CFAs signed before 1 April 2013.

Supplementary legal aid scheme

It had also been proposed that successful claims funded by legal aid would also face a 25 per cent deduction from damages for the benefit of the legal aid fund. The proposal was made to ensure that legal aid did not become a more attractive funding route to privately funded CFAs in the light of the proposal that success fees should come out of the damages awarded. These funds were to be used for a supplementary legal aid scheme to supplement the legal aid costs of other cases. However, ministers have decided not to proceed with implementation of the scheme from April 2013 as envisaged originally, but have not ruled out such a scheme as an option for the future.

Localism Act 2011

The Localism Act (LA) includes provisions to extend the repairing obligation in LTA s11 to flexible, secure and assured tenancies granted by registered providers with a fixed term of seven years or more (LA s166).

Housing regulation

On 1 April 2012, the Tenant Services Authority (TSA) was abolished with its functions taken over by the Regulation Committee of the HCA. From this date, social housing landlords in England have had to meet a new set of regulatory standards.[2] The new regulatory framework for registered social housing providers includes a number of changes from those used previously by the TSA, in particular, reflecting the new distinction between the regulator's economic and consumer regulation roles. Consumer regulation is applicable to all registered providers, including local authority landlords and private registered providers such as not for profit housing associations.

However, the regulator no longer has an active role in monitoring providers' service performance. Under the new arrangements for regulation, others, such as tenant panels, MPs and elected councillors, will have a more prominent role in scrutinising landlords overall (see below).

- The Tenant Involvement and Empowerment standard requires registered providers to ensure that tenants are given a wide range of opportunities to influence and be involved in the management of repair and maintenance services, such as commissioning and undertaking a range of repair tasks, as agreed with landlords, and sharing in savings made. It also requires registered providers to provide tenants with accessible, relevant and timely information about the progress of any repairs work.
- The Home standard requires that registered providers must ensure that tenants' homes meet the decent homes standard and continue to maintain their homes to at least this standard, and meet the standards of design and quality that applied when the home was built, and were required as a condition of publicly funded assistance, if these standards are higher than the decent homes standard. However, registered providers may agree with the regulator a period of non-compliance with the decent homes standard, where this is reasonable.

Regulated providers must also provide a cost-effective repairs and maintenance service to homes and communal areas that responds to the needs of, and offers choices to, tenants, and has the objective of completing repairs and improvements right first time. They must also meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes.

Non-compliance with the standards would amount to maladministration. The widening of the scope of the standards may, therefore, afford tenants more redress than was the position previously.

Ombudsman complaints

The LA provides that local housing authorities in their capacity as providers of social housing, will fall within the remit of the Housing Ombudsman (s181). As a result, from 1 April 2013 onwards, complaints against local authorities, in their role as social landlords, will be considered by the Housing Ombudsman rather than the Local Government Ombudsman.

From 1 April 2013, a complainant will have to pass through a filter before being able to complain to the Housing Ombudsman. Housing Act (HA) 1996 Sch 2 para 7A(1) as amended by the LA provides that a complaint to the Housing Ombudsman is not 'duly made' unless it is made in writing by a designated person by way of referral of a complaint to the designated person. A designated person is defined in HA 1996 Sch 2 para 7A(3) as an MP, a local councillor for the district in which the property concerned is located or a 'designated tenant panel' for the social landlord.

However, some direct access to the ombudsman has been retained as follows:

- where the complainant has exhausted the internal complaints procedure of the housing provider and eight weeks have elapsed since those procedures were exhausted; or
- the ombudsman is satisfied that a designated person has refused to refer the complaint; or
- a designated person has agreed that the complainant can complain to the ombudsman directly (HA 1996 Sch 2 para 7B as amended by the LA).

It remains to be seen whether this new filter will reduce the number of complaints made to the ombudsman.

The LA also introduces a new power for the secretary of state to authorise the Housing Ombudsman to apply to a court or tribunal for an order that a determination made by the ombudsman may be enforced as if it were an order of a court (HA 1996 Sch 2 para 7D as amended by the LA). Before making such an order, the secretary of state must consult with representatives of approved schemes, social landlords and tenants and such other persons as the secretary of state considers appropriate.

Solving disputes in the county court

On 9 February 2012, the government published its response to the consultation, *Solving disputes in the county courts: creating a simpler, quicker and more proportionate system*.[3] The small claims limit for housing disrepair is to remain at £1,000, but it proposes that the fast track limit is to be increased to £10,000. This will mean that damages-only disrepair claims will be small claims if they are less than £10,000. Once the LASPO Act changes are in force, damages-only claims will be ineligible for public funding in any event.

However, the change to the small claims limit will mean that damages-only claims for less than £10,000 will no longer be eligible for funding under a CFA either, as no costs will be recoverable. It remains to be seen whether this will lead to a large increase in the number of small claims, or (perhaps more likely) to many tenants, who have lived with disrepair for a number of years, simply not pursuing their claims.

CASE-LAW

Practice and procedure

■ Sim v Latymer Court

[2011] EWCA Civ 1492, 7 November 2011

Ms Sim was the long leaseholder of her flat. Her front door was broken down by the police when seeking to trace a leak into the flat below hers. She applied in the High Court for a mandatory injunction requiring the block's management company to reinstate the door. The claim was resisted on the basis that there was a triable issue concerning whether the company or the police were liable. The judge decided that any claim should proceed in the ordinary way in the county court and refused the injunction sought. He ordered Ms Sim to pay costs assessed at £500. The Court of Appeal refused permission to appeal against the costs order as it had no prospects of success.

■ Chowdhury and another v Woodman

[2012] EWCA Civ 690, 14 May 2012

The claimant landlady served a HA 1988 s21 notice on the defendant assured shorthold joint tenants and sought possession. A district judge made a possession order and a circuit judge dismissed an appeal. The tenants sought permission to bring a second appeal, arguing that:

- they had not been served with information about the protection of their deposits;
- the landlady had not been able to let the property to them because she was a bankrupt and/or did not have the mortgage lender's permission to let; and
- there were claims for damages for harassment and disrepair.

The Court of Appeal refused permission to appeal. It held that:

- the judge had found as a fact that the

deposit information had been served;
■ the tenants were estopped from denying their landlady's title to let; and
■ the possible counterclaims for damages were no defence to the claim for possession.

Comment: Notwithstanding this decision, it is arguable that although not a defence to the possession proceedings, counterclaims should be heard at the same time as possession claims where there are issues of credibility to be determined.

Liability

Contractual liability

■ Bernard and another v Meisuria

[2011] EWCA Civ 1382,
2 November 2011

The claimants had been tenants of the defendant private landlord. They brought a claim for compensation for the landlord's breach of his obligations to repair their drains. Their case was that rats had entered from the broken drains and that the rats and fleas had infested the house. At trial, a judge awarded the claimants damages of £20,000 (see January 2011 *Legal Action* 20).

The landlord sought permission to appeal to the Court of Appeal on the basis that the expert evidence could not have enabled the judge to find the claim proved on the balance of probabilities. Permission to appeal was refused. The judge had assessed the evidence and reached a conclusion which was open to him. There was no real prospect of upsetting his decision on an appeal.

■ Newman v Framewood Manor Management Company Ltd

[2012] EWCA Civ 159,
21 February 2012

The claimant was a long lessee of a flat in a block which contained common recreation facilities, including a swimming pool and jacuzzi. The lessor was a management company with all the lessees as shareholders. The claimant claimed, among other things, that in breach of the obligation in the lease to repair the recreational facilities, the lessor had blocked off the doorway to the swimming pool, because of problems of condensation, and replaced the jacuzzi, which had fallen into disrepair, with a sauna.

The lessor defended on the basis of an exoneration clause, which stated that the lessor 'shall not be liable or responsible for any damage suffered by the lessee … through any defect in any fixture, conduit, staircase or thing in or upon [Framewood Manor] or any part thereof … or through the neglect or fault or misconduct of any servant, agent, contractor or workman whatsoever employed by … [the lessor] in connection with [Framewood Manor] except insofar as any such liability may be covered by insurance effected … by the [lessor]' (para 9). The judge held than the exoneration clause ruled out liability for defects not covered by insurance.

The Court of Appeal overturned this ruling. It held that the exoneration clause only applied where the lessor was sued on the basis of vicarious liability. If the judge were right, the procedural provisions for giving notices of breach would be completely circumvented and rendered otiose. The lessor expressly undertook certain repairing covenants. It would be very odd indeed if, under later provisions of the lease, the lessor was exonerated from liability for breaching those covenants unless it had taken out insurance. Furthermore, the word 'damage' in the exoneration clause covered physical damage, but did not include a claim for loss of amenity. The court found that the judge was correct not to award specific performance, because a sauna had been fitted at considerable expense and the cost of installing a new jacuzzi would be excessive and disproportionate when compared with the loss of amenity. See also below under 'Quantum'.

■ Faidi and Faidi v Elliot Corporation

[2012] EWCA Civ 287,
16 March 2012

The claimants were tenants of a flat. The defendants were tenants of the flat above, who had laid wooden flooring throughout. The landlords had agreed to the works and made it a condition of the works that appropriate sound insulation was installed. The claim was brought on the basis that the defendants were in breach of the obligation in their lease to keep the floors covered with carpet and underlay, with the result that noise was penetrating into the claimants' flat. No issue was taken concerning the lack of privity of contract between the parties, with it being conceded that the obligation about the laying of carpets was directly enforceable between the parties in the county court. The judge dismissed the claim on the basis that there had been a waiver of the requirement to lay carpets as this would have been inconsistent with permitting the installation of the new timber floor and underfloor heating.

The Court of Appeal dismissed an appeal. The landlords had expressly consented to the defendants' works, which had necessarily envisaged that no carpeting would be laid over the new floor. The covenant was no longer capable of enforcement in respect of that flat.

■ Daejan Properties Ltd v Campbell

[2012] EWCA Civ 875,
19 June 2012

A tenant occupied a maisonette on the top two floors of a five-storey converted house. The lease contained a landlord's repairing covenant 'to keep the roof and outside walls of the premises in good repair and condition and to paint the exterior of the premises once in every seven years', and a corresponding obligation on the tenant to pay 40 per cent of the cost by way of service charges (para 6). 'Premises' was defined as only the maisonette and not the whole building (para 5). The High Court allowed an application by the landlord for a declaration that the 'premises' should be treated as applying to the whole house, on the basis that that is what the parties must be taken to have meant as this would enable the landlord to recover a proportion of the costs of repair of the whole building (para 10). If this was not the position, the tenant would only have been liable to pay 40 per cent of the costs of redecoration of her maisonette and nothing towards the rest of the building. The Court of Appeal has granted the tenant permission to appeal against that ruling.

Access

Protection of Freedoms Act 2012 Sch 2 para 12(1) has repealed section 8(2) of the LTA. The subsection gave a landlord a right to enter tenanted premises for the purpose of viewing their state and condition. However, it only applied to tenancies at a low rent, namely, less than £80 per annum in London and less than £52 per annum elsewhere. The repeal came into effect on 1 July 2012. The obligation under LTA s8(1) to let and keep tenancies at a low rent fit for human habitation is unaffected.

■ Beaufort Park Residents Management Ltd v Sabahipour

[2011] UKUT 436 (LC),
21 November 2011,
April 2012 Legal Action 45

The terms of a lease required the tenant 'to permit the lessor and its surveyors or agents with or without workmen and others at all reasonable times to enter upon the flat for the purpose of examining the state and condition thereof' (para 16). The tenant reported a leak and the lessor appointed its director (who was also the company secretary) as its agent to investigate. There was a history of difficulties between the tenant and the director, and the tenant refused access on the basis that he did not accept that the director had any authority or was suitably qualified to enter and inspect the leak; he was prepared to admit any other agent of the landlord. The landlord applied for a declaration that the tenant was in breach of the lease. A Leasehold Valuation Tribunal declined to make the declaration.

The Upper Tribunal allowed the landlord's appeal. The director was the company's agent and the tenant was obliged to give him access for the purposes stated in the lease.

Tortious liability

Nuisance

■ Siveter v Wandsworth LBC

[2012] EWCA Civ 351,
16 February 2012

The claimant was a council tenant. Her home was rendered uninhabitable by an infestation of poultry mites. She claimed that the mites had spread from a pigeon's nest resting on a cupboard outside her flat, into the cupboard and through an opening into her flat. The council had arranged to have the nest removed, but the cupboard itself had not been inspected or sprayed. The judge rejected a claim that the landlord was liable for compensation on the basis that the council had acted reasonably in removing the nest and spraying the area even though it had not sprayed inside the cupboard.

The Court of Appeal allowed an appeal and remitted the case to the county court for the assessment of quantum. The expert evidence was that, in addition to the nest removal, the cupboard should have at least been inspected and, probably, treated. It was inevitable and foreseeable that if left uninspected and untreated, the infestation would migrate from the cupboard and throughout the flat.

Defective Premises Act 1972

■ Hannon v Hillingdon Homes Ltd

[2012] EWHC 1437 (QB),
9 July 2012

The tenant of a council house removed the banisters on one side of the internal staircase in the house. Some years later, the claimant, a workman for one of the council's contractors, lost his footing on the staircase and, in the absence of the banisters, fell and sustained an injury. The council later reinstated the banisters, and recharged the tenant for the cost of the work. It denied liability for the injury. The council's first defence was that the stairs without a banister were so obviously dangerous that any reasonable workman would have refused to work in the house. When this defence failed, it argued that the duty of care imposed by DPA s4 did not apply because either:

■ the banisters were not part of the 'structure' (para 27); or

■ the council had been under no duty to repair the banisters (by replacing them) because they had been removed by the tenant; and/or

■ the council had had no notice of the defect.

The High Court found the council liable. The banisters were part of the structure. The layout of the house was such that the staircase was an essential feature of the house, which was necessary to complete its intended appearance, stability, shape and identity, and the banisters were an integral part of the staircase. Accordingly, the obligation to repair was owed and the failure to replace the banisters was a relevant defect given that it had been removed after the tenancy commenced, which was the material time under the DPA. The definition of 'relevant defect' does not embrace a consideration of whose fault it was that the relevant defect came into existence. There had been sufficient home visits by council staff and agents to the property so that the council was deemed to know, or ought to have known, of the defect.

■ Drysdale v Hedges

[2012] EWHC B20 (QB),
27 July 2012

A landlady let a house with three steps leading up to the front door. In the course of moving her belongings into the house, the tenant slipped on the steps (which were wet after rain) and fell sideways over the edge of the steps and into the basement area in front of the house. She was seriously injured and brought a claim for damages.

The High Court held that the landlady was not in breach of any repairing obligation under the tenancy agreement or under DPA s4 because neither the step nor its painted surface were in disrepair. As neither the tenancy agreement nor the DPA applied, the landlady simply owed a common law duty of care. Although the step had been painted with semi-gloss paint, there had been no breach of duty because the paint was for exterior use and the container gave no warning not to use it on steps.

Occupiers' Liability Acts

■ Kirkham v Link Housing Group Ltd

[2012] CSIH 58,
4 July 2012

The claimant was a tenant of a housing association. She tripped on the raised edge of a paving slab which was one of a series forming a path from the front door of her house to the pavement. Until she fell, neither the tenant nor the landlord had known that the path needed repair. She claimed damages for breach of her tenancy agreement or for breach of the duty of care in the Occupiers' Liability (Scotland) Act 1960. A judge dismissed the claim.

The Court of Session dismissed the tenant's appeal. There had been no breach of the tenancy agreement because the path was not a common part, and therefore liability to repair only arose once the landlord had knowledge of the need for repair. The claim for breach of duty of care failed because the tenant had not led evidence of the reasonable standard of care practiced by other landlords which would demonstrate that her landlord had failed to match that standard.

■ Alexander v (1) Freshwater Properties Ltd (2) Place (trading as Place Construction)

[2012] EWCA Civ 1048,
27 July 2012

The front door to a block of flats had a self-closing device. It did not work properly and a notice had been posted on the door asking that those leaving should pull it shut. A handle was available for this purpose on the outside of the door. A builder removed the handle to clean it. The claimant caught her fingers in the door when closing it and sued the landlord and the builder for compensation for personal injury under the Occupiers' Liability Act 1957 and negligence. A judge decided that the landlord was 25 per cent liable and the builder 75 per cent liable.

The Court of Appeal adjusted the proportions to 50/50. The landlord had known of both the failure of the self-closing device and the removal of the handle, but had failed to take reasonable alternative measures to allow the door to be closed safely. The builder had been negligent in allowing the door to stay without a handle for so long when it posed an obvious risk of injury. There was no good reason to attribute greater responsibility to the builder than to the landlord.

Quantum

In keeping with the decision in *Simmons v Castle* (see above under 'Uplift in damages') it appears that from 1 April 2013 general damages in disrepair claims should be increased by ten per cent. Advisers negotiating damages now in cases where trials would not occur until after this date should therefore seek an additional ten per cent in damages, presumably by either uprating rental figures by ten per cent and then calculating damages, or by calculating the likely award and then uprating this 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 inherently global awards are more arbitrary.

■ Newman v Framewood Manor Management Company Ltd

[2012] EWCA Civ 159,
21 February 2012

The facts of this case are noted under 'Contractual liability' above.

The Court of Appeal held that sums awarded for loss of amenity are, for reasons of policy, in general low. It awarded damages of £3,500 for the loss of use of the jacuzzi, made up of £1,000 for the period of around 2.5 years to trial and £2,500 for the future loss. It also awarded £1,000 for blocking the doorway to the swimming pool at a rate of £20 per week; this was to compensate not just for the

claimants having to walk an extra short distance, but also for the aggravation and inconvenience of having to walk outside rather than having an inside entrance.

■ **Woolf v North London Homes**

Clerkenwell and Shoreditch County Court, 19 April 2012[4]

The claimant was an assured shorthold tenant of a two-bedroom flat in the attic of house from 28 November 2008, but left in January 2011. She complained of disrepair from the commencement of the tenancy, including a leak to the bath, a leaking toilet and a burst pipe, and an intermittent hot water supply. These defects were remedied, but from 2009 onwards there was a bad smell of damp, the front door would not lock properly, the bathroom window was rotten and a pane fell out, the roof was leaking and the building suffered from subsidence. The defects were confirmed by the evidence of an environmental health officer and the tenant's surveyor. The landlords defended the claim on the basis that the tenant had refused access and made various allegations against her, including that she was an alcoholic, had deliberately damaged the property, kept dogs at the property, left vast quantities of nappies outside the premises and had caused the attendance of the police.

All of these allegations were rejected by the judge, who found that there was significant disrepair from the time when the claimant moved in, which worsened over time until March 2010 when the claimant's surveyor inspected. During 2009, the premises had defective windows and were subject to damp. The judge awarded damages at 20 per cent of the rent of £1,450 per month for the 15 months from the beginning of the tenancy until March 2010, and 30 per cent of the rent for the eight months thereafter, making a total of £7,830 for disrepair. She also awarded £2,500 in respect of special damages on the basis that the claimant had suffered some loss; however, she did not accept some of the more exotic items in the schedule of special damages for which the claimant had no receipts. Total damages awarded were, therefore, £10,330.

■ **Anane Addo v Sehmi**

Croydon County Court, 21 June 2012[5]

In a possession claim, the tenant counterclaimed for disrepair she had suffered at the two-bedroom house that she rented between June 2008 and the end of July 2010. There was isolated damp in the property from the start of the tenancy, which was aggravated in March 2009 when a water pipe burst. Thereafter, there was damp and mildew in the majority of the rooms in the property, in single patches mostly about a metre square in each room. On 6 April 2009, Croydon Council served a notice on the landlord requiring him to investigate the damp and mould growth. No works were done, with the landlord saying that he was too poor to carry them out and blaming the tenant (whose housing benefit was stopped by Croydon while the disrepair remained outstanding).

The tenant was awarded £8,100 damages for disrepair, being 60 per cent of the rent of £900 per month from May 2009 until the end of July 2010.

Local Government Ombudsman

Complaint

■ **Brighton and Hove City Council**

10/021/844, 12 December 2011

Following flooding in January 2010 caused by a burst water pipe in his loft, a vulnerable tenant moved out while repair works were undertaken. The works should have been completed by July 2010, but were not finished until late summer 2011, when the tenant returned home. The tenant was offered temporary accommodation, namely, a single room with shared facilities, but felt that it was unsuitable as it was full of drug addicts and alcoholics. He also refused a permanent move as he wished to return home after the repairs. The tenant had stayed with a friend for 18 months, sleeping on a sofa.

The Local Government Ombudsman decided that there had been maladministration causing serious injustice and recommended £3,000 compensation. As a result of the complaint, the council put in place a 14-point action plan to deal with the handling of temporary decants from council properties.

Housing standards

A round up of recent cases was reported in July 2012 *Legal Action* 46 and 47. Accordingly, only the latest cases are reported below.

■ **Sandwell Council v Singh Barham**

Sandwell Magistrates' Court, 1 June 2012

The defendant was a private landlord. On inspection of a house he had let, the council found decayed, single-glazed timber windows, dangerous electrics, no constant supply of hot water or heating, damp and mould growth, and loose and uneven paving. It served an improvement notice under the HA 2004. The council then prosecuted for non-compliance with the notice. The defendant pleaded guilty at Sandwell Magistrates' Court and was fined £4,000 with costs of £1,723.

■ **Hillingdon LBC v Uddin**

Uxbridge Magistrates' Court, 3 July 2012, October 2012 Legal Action 36

The defendant was a private landlord. He was prosecuted by the council for two offences. First, he had rented out a garden shed as living accommodation in breach of an enforcement notice. Second, he had failed to comply with the conditions of a house of multiple occupation (HMO) licence on another of his properties.

Uxbridge Magistrates' Court imposed fines of £6,600 and £5,400 respectively. He was ordered to pay costs of £3,377.

■ **Reading BC v Sheikh and Jarvis Properties**

Reading Magistrates' Court, 9 July 2012

The first defendant was a private landlord of a registered HMO in the council's area. The second defendant was the landlord's managing agent for the property. An inspection by the council's officers, made following a resident's complaint, revealed that:

- 11 people were living at the property instead of the permitted seven;
- the fire alarm system was not working;
- other fire safety provisions, such as fire doors and emergency lights, were not being maintained;
- fire safety notices were positioned incorrectly and did not direct occupiers to exit via a safe route;
- an internal shower room extractor fan was not working and electrical wires were exposed; and
- the shower and the toilet in the top-floor shower room were blocked up due to a failed macerator unit, resulting in foul water filling up both the shower tray and toilet, and leaking through to the ceiling below.

At Reading Magistrates' Court, the agents were fined over £20,000 for failing to manage the HMO properly, to comply with health and safety conditions in the HMO licence and to provide information. The landlord was fined £500 with legal costs of £200 after pleading guilty to failing to provide requested information.

■ **Liverpool City Council v Kassim**

[2012] UKUT 169 (LC), 11 July 2012

The council served a prohibition notice to prevent the use of residential accommodation on the ground that the heating system provided could not prevent an Housing Health and Safety Rating System hazard arising from 'excess cold'. The prohibition notice prevented the use of the property until such time as the landlord had installed a fixed, permanent, whole-flat heating system, which had to be programmable, capable of being controlled by the occupants, efficient and affordable to run. The landlord appealed to a Residential Property Tribunal (RPT) for the notice to be quashed on the basis that, since it was issued, he had double glazed all the windows and fitted electric panel heaters with timer switches and

thermostats. The council contested the application on the basis that the heating system was not affordable. The RPT quashed the prohibition notice on the basis that the affordability of the heating system to a tenant was not a relevant consideration.

The Upper Tribunal set aside the decision and remitted the case for rehearing. The Upper Tribunal made no order as to costs.

■ Oadby and Wigston BC v Rose

Leicester Magistrates' Court, 19 July 2012

The defendant landlord let a property which was in an incomplete and unsafe condition. In July 2010, the tenant complained that she was living in a building site as there was a half-built extension. She also complained that there were problems in the property, including dangerous electrics, a bathroom sink falling off the wall and damp caused by a leaking roof. On inspection, there were found to be two category 1 hazards and two category 2 hazards for the purposes of HA 2004 Part 1. Major works remained outstanding six months after the landlord was contacted about the defects. On a prosecution brought by the council, Leicester Magistrates' Court fined the landlord £1,500 and ordered him to pay £2,000 costs.

■ Health and Safety Executive v Jamil

Central Criminal Court, 20 July 2012

A self-employed builder undertook building work as part of which he enclosed the flue ventilating a boiler. The carbon monoxide generated by the boiler caused the deaths of an elderly couple residing in the house.

The defendant builder pleaded guilty to breaching regulation 8(1) of the Gas Safety (Installation and Use) Regulations 1998 SI No 2451. He was fined £75,000 and ordered to pay £25,452 in costs, in addition to a 12-month community order requiring him to undertake 150 hours of community service.

■ Hillingdon LBC v Singh Brar

Uxbridge Magistrates' Court, 20 July 2012

The council served an enforcement notice, which in September 2010 was upheld on appeal, requiring the defendant landlord to restore an outbuilding (that he was letting) to its original use as a garage and to restore the subdivided main house to a single home.

On a prosecution for failure to comply with either requirement, the defendant pleaded guilty. At Uxbridge Magistrates' Court he was fined £10,000 and ordered to pay £4,300 costs.

■ Portsmouth City Council v JL Homes Ltd

Portsmouth Crown Court, 10 August 2012

After receiving complaints from students renting a house from the defendant company, a council inspection found the following:

- one bedroom was too small to be used as sleeping accommodation;
- three bedsit rooms were too small to be used for sleeping and cooking;
- the cooking facilities were sub-standard; and
- the three bedsits and the cooking facilities could only be reached by an outside metal staircase.

On a prosecution brought by the council, the company denied failing to comply with two housing prohibition orders and failing to provide the council with a copy of a tenancy agreement. It was found guilty at the magistrates' court on all three counts and fined £3,000 for each offence with costs of almost £3,000. It appealed against one conviction for failing to comply with a housing prohibition order, the conviction for failing to provide the tenancy agreement and all three fines.

Portsmouth Crown Court dismissed the appeals and upheld the convictions and fines. Costs were increased to £4,500.

■ Vaddaram v East Lindsey DC

[2012] UKUT 194 (LC), 13 August 2012

The council served a prohibition notice and an improvement notice in respect of a flat on the basis that there was inadequate means of escape from any fire and there was an increased risk of fire as the tenants had to use portable electric heaters. The landlord's appeal against the prohibition order was dismissed by a RPT. He appealed on the grounds that he had undertaken further works, the premises met the Building Regulations 2010 SI No 2214 requirements, and the Local Authorities Coordinators of Regulatory Services (LACORS) guidance on fire safety (which had not been before the RPT) was satisfied.

The Upper Tribunal conducted a rehearing and allowed the appeal with costs. The LACORS guidance was highly material and should have been put before the RPT by the council.

■ Health and Safety Executive v MacDonald

Westminster Magistrates' Court, 15 August 2012

The defendant was a private landlord. His tenant, her partner and their young daughter inhaled large quantities of carbon monoxide leaking from a faulty gas boiler in the flat. They were saved from further harm after a carbon monoxide alarm sounded in a flat above, but they needed hospital treatment. The defendant pleaded guilty to failing to ensure that a gas fitting was in safe condition and failing to carry out an annual inspection.

At Westminster Magistrates' Court, he was sentenced to six months' imprisonment, suspended for two years, ordered to carry out 200 hours' community service and ordered to pay £8,211 in costs.

1 Available at: www.communities.gov.uk/documents/statistics/pdf/2173483.pdf.
2 The regulatory framework for social housing in England from April 2012, available at: www.homesandcommunities.co.uk/sites/default/files/our-work/regfwk-2012.pdf.
3 The government response is available at: https://consult.justice.gov.uk/digital-communications/county_court_disputes.
4 Edward Fitzpatrick, barrister, London and Christopher Brown, solicitor and partner at Alban Gould Baker & Co, London.
5 David Renton, barrister, London and Daisy Bruce, solicitor at Braidwood Law Practice Solicitors, Croydon.

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