Housing repairs update 2013

In this annual review, Beatrice Prevatt details policy, legislation and case-law concerning housing disrepair. Readers should note that important cases relating to housing standards are reported on pages 19–21 of this issue.

POLICY AND LEGISLATION

Decent homes standard

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

In February 2013, the *English Housing Survey: Headline Report 2011–12* was published.[1] In 2011, 5.4 million dwellings (24 per cent) were non-decent, a reduction of well over 500,000 compared with 2010. The rate was lowest in the social rented sector (17 per cent) and highest in the private rented sector (35 per cent).

The proportion of dwellings with damp problems has reduced from 13 per cent in 1996 to five per cent in 2011. Private rented dwellings were more likely than those in other tenures to experience damp problems, as they were more likely to be older stock.

The energy efficiency of the housing stock continued to improve between 1996 and 2011 with the largest proportion of dwellings in the highest energy efficiency rating bands in the social sector.

On 10 July 2013, the *English Housing Survey: HOMES 2011* was published, which provides more detail about the housing stock.[2] Among other findings, it reports that the proportion of dwellings with any damp problems has fallen since 2001 (ten per cent to five per cent) the largest fall being for penetrating damp. Serious condensation and mould growth were the most common type of problems in 2011 (three per cent). The report suggests that it is surprising that the incidence of problems with condensation and mould growth has not reduced more substantially given that between 2001 and 2011 considerable progress has been made in improving heating and insulation in dwellings. A much higher proportion of homes with serious condensation now have working extractor fans, but in recent years there have been large rises in fuel costs, increasing the number of households struggling to heat their homes. This may result in a reluctance to use extractor fans or to open windows, which in turn would increase the incidence of problems with condensation.

Around 3.5 million dwellings (15 per cent) had one or more category 1 hazards, the most common types relating to falls (nine per cent) and excess cold (six per cent). Dwellings in the private rented sector, small terraced houses and homes built before 1919 were more likely to be in substantial disrepair, or have serious damp or category 1 hazards.

Around five million dwellings were in substantial disrepair, had serious damp or were non-decent. While the majority had just one of these three problems, 1.5 million had two of these problems and a further 323,000 had all three. Using an approximate scale of dwelling condition, 15 per cent of homes were classed in the 'worst' category, 15 per cent as 'poor', 27 per cent as 'worse than average' and the remaining 43 per cent as 'generally satisfactory'. Private rented homes and converted flats were more likely to be classed as 'worst' than among other groups.

Legal aid funding reform

Major chances to legal aid were made by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, which came into force on 1 April 2013. From 1 April 2013, most disrepair cases are out of scope for legal aid, for both legal help and legal representation, except for cases where there is a serious risk of harm and disrepair counterclaims. Certificates granted before 1 April 2013 are unaffected.

In addition to the LASPO Act, advisers will need to consider the *Lord Chancellor's guidance under section 4 of Legal Aid, Sentencing and Punishment of Offenders Act 2012*, which is on the Ministry of Justice website,[3] and the Legal Aid Agency's (LAA's) *Frequently asked questions: civil legal aid reforms*, which is on the LAA's website.[4]

Serious risk of harm

LASPO Sch 1 Part 1 para 35(1) keeps in scope:

> *Civil legal services provided to an individual in relation to the removal or reduction of a serious risk of harm to the health or safety of the individual or a relevant member of the individual's family where –*
> *(a) the risk arises from a deficiency in the individual's home,*
> *(b) the individual's home is rented or leased from another person, and*
> *(c) the services are provided with a view to securing that the other person makes arrangements to remove or reduce the risk.*

Given the reference to a 'deficiency', which is defined as any deficiency arising as a result of the construction of a building, an absence of maintenance or repair or otherwise' rather than 'disrepair'. design defects and condensation dampness will be covered, as long as there is a legal remedy (LASPO Sch 1 Part 1 para 35(4)). The exclusions for breach of statutory duty and in relation to damage to property have been disapplied for disrepair claims, so that claims based on, for example, the Defective Premises Act 1972 will remain in scope, but the exclusion in relation to negligence claims remains (LASPO Sch 1 Part 1 para 35(2)). There is no specific exclusion in relation to nuisance claims, so that claims for pest infestations and water ingress from other flats let by the same landlord may remain in scope if they pose a serious risk of harm to the health and safety of an individual and if it is considered that such claims arise from a deficiency in the individual's home.

Section 12.10 of the guidance sets out a list of some of the factors to be considered when deciding if there is serious risk as follows:

- whether the deficiency has already resulted in harm to the applicant or a relevant member of his/her family;
- whether, as a result of the deficiency, an existing health condition is exacerbated;
- whether the applicant or relevant family members affected by the deficiency are in a high-risk age group;
- whether the applicant is vulnerable due to a disability;
- whether there are relevant environmental conditions;
- whether there are multiple deficiencies which could, taken cumulatively, be of greater seriousness than individually;
- whether a single deficiency poses multiple risks;
- whether a deficiency affects rooms or areas that are shared;

■ whether the expert instructed under the Housing Pre-Action Protocol reports that the deficiency is likely to deteriorate further in the near future; and
■ whether the local authority has already identified hazards which arise from deficiencies in the home, for example, under the Housing Health and Safety Rating System.

Legal help will be available to investigate the merits of a claim and obtain experts' reports, but if it is considered subsequently that the serious risk requirement was not met or has been removed by repairs having been carried out, funding will cease at that stage. Section 82 of the *Frequently asked questions* document and section 12.7 of the guidance make it clear that advisers must use legal help to follow the pre-action protocol and to obtain an expert report unless the urgency of the situation means that emergency legal representation was justified and it was not appropriate to follow the pre-action protocol.

Effectively, advisers will be limited to acting in applications for interim injunctions and claims for specific performance. Damages-only claims are no longer within scope. Section 81 of the *Frequently asked questions* document confirms that any claim for damages must be funded separately from the legally aided claim. Work should be apportioned between the two retainers, but the legal aid statutory charge will attach to any damages recovered. Claims for damages for personal injury are excluded by LASPO Sch 1 Part 1 para 35(2) and Part 2 para 1.

Disrepair counterclaims

LASPO Sch 1 Part 1 para 33(6)(a) keeps in scope 'services provided to an individual in relation to a counterclaim in proceedings for a court order for sale or possession of the individual's home'. Legal aid will, therefore, continue to be available for disrepair counterclaims, even where the counterclaim does not pose a serious risk to health, and for damages-only counterclaims. Such counterclaims must also amount to defences to possession claims in order to qualify for funding: see Civil Legal Aid (Merits Criteria) Regulations 2013 SI 2013 No 104 reg 61(2).

LASPO Sch 1 Part 1 para 33(9) defines a 'home', as a 'house, caravan, houseboat or other vehicle or structure that is the individual's only or main residence'. No legal aid is available if the client is or was once a trespasser in the dwelling (Sch 1 Part 1 para 33(10)).

A client who has withheld rent to 'provoke possession proceedings' must not be granted legal aid in order to counterclaim (Civil Legal Aid (Merits Criteria) Regulations 2013 SI No 104 reg 11(6) and paragraph 7.4(c) of the guidance).

Conditional fee agreements

Damages-only claims for disrepair will, in future, have to be funded either privately or under a conditional fee agreement (CFA). CFAs have also become less attractive for tenants and advisers, as the LASPO Act also ended the recoverability of success fees and after-the-event insurance premiums from the losing defendant (LASPO ss44 and 46). Success fees are to be set out as a percentage of damages received and will be recouped from successful claimants. The ten per cent uplift in general damages claims provided for in *Simmons v Castle and Association of British Insurers and Association of Personal Injuries Bar Association (interested parties)* [2012] EWCA Civ 1288, 10 October 2012 (see 'Quantum' below) is supposed partly to compensate for this loss. The ten per cent uplift does not apply to cases funded under CFAs signed before 1 April 2013.

Small claims limit

The small claims limit was increased to £10,000 on 1 April 2013, so that many damages-only disrepair claims will fall within the small claims track with only fixed costs being recoverable. This obviously has implications for funding such claims, as not only will legal aid be unavailable, but it is unlikely such claims will be funded under a CFA.

CASE-LAW

Practice and procedure

■ Miah v McGrogan

[2012] EWCA Civ 1685,
8 November 2012

Students rented a house for the academic year 2009/10. Their landlord brought a claim for unpaid rent. The students defended on the basis that the house had been non-habitable throughout by reason of its poor condition and ongoing repairs. The local council had served a statutory improvement notice. The judge held that the landlord had been in breach of the covenant to repair. She dismissed the landlord's claim for rent on the basis that his liability to the students exceeded his own claim. The landlord appealed. He contended that the judge had been wrong to dismiss the claim for rent in the absence of both a fully pleaded counterclaim and a pleaded set off in the defence.

The Court of Appeal refused permission to appeal: there was no prospect of an appeal succeeding. The judge was not bound rigidly by the pleadings. She was entitled to consider the parties' cases, as they emerged in the light of the evidence at trial, subject to considerations of fairness. The students had been self-representing litigants, and the professionally represented landlord had been well able to respond to their case at trial. The judge had been entitled to find that the landlord's agent had had full notice of the disrepair. The fact that the students had actually remained in occupation did not undermine their case that the property had been found in seriously poor condition when they arrived at the start of term because they had had no alternative but to move in.

■ Lazari v London & Newcastle (Camden) Ltd

[2013] EWHC 97 (TCC),
31 January 2013

The claimant purchased the long lease of a flat from the defendant long leaseholders, who employed contractors to design and construct a number of luxury flats. She claimed that the flat suffered from serious overheating caused by the heat from service pipes running below the floor. She brought a claim for breach of contract and breach of the DPA s1 on the basis that the defect rendered the flat uninhabitable. The defence acknowledged an inherent defect, but did not clearly admit liability. The claimant applied for an order that £100,000 be paid into court pending trial under Civil Procedure Rules (CPR) Part 3.1. The defendant then acknowledged liability at the hearing of the application, and the High Court ordered payment in of £30,000 under CPR r3.1.5 and/or CPR r25.7. Such a payment would encourage serious settlement discussions and concentrate minds on compliance with the court's case management orders between the hearing and trial.

Liability

Contractual liability

■ Bonham v Pentland Housing Association

[2013] ScotSC 10,
6 February 2013

The claimant was a tenant on the association's housing estate. In the early hours of one morning, the tenant left her flat to investigate a noise. She was in the outside courtyard area when she fell, fracturing her ankle. There had been severe winter weather conditions for some weeks before the fall and compacted snow and ice had built up on the surfaces of the external common parts. The tenant brought a claim for damages in contract and tort.

The court held that the claim failed on the facts because the claimant could not account for how she fell. However, even if she had slipped on ice, the claim failed in contract because the tenancy agreement only required the housing association to 'repair', and that term did not include clearing snow and ice, or spreading grit. The claim in negligence would also have failed because there was no evidence before the court of the level or standard of care that a reasonable social

landlord would have taken in the same circumstances.

■ Gavin and another v Community Housing Association Ltd (now One Housing Group Ltd)

[2013] EWCA Civ 580, 24 May 2013

The tenants of commercial premises on the lower floors of a building agreed to put and keep their premises in good repair and condition. There was no corresponding obligation on their landlord to repair those parts of the building which it retained and let to residential tenants. The landlord was obliged to insure the demised premises and to use any insurance monies received to repair and/or rebuild the premises.

The tenants' premises were damaged by water and sewage penetration from the parts retained by the landlord. The cost of repairs was met by claims on the insurance. The tenants then sought damages from the landlord for financial loss consequent on the disrepair to their premises caused by the leaks. The tenants relied on an implied obligation on the landlord to keep the retained parts in repair, or alternatively a common law duty of care as adjoining occupier to remedy any defect in those premises which was capable of causing damage to the demised premises.

The claim failed. Although there was no express repairing covenant on the landlord, the repair of the structure of the building was catered for by the insurance clause. In the light of those provisions, there was no reason based on necessity or business efficacy to imply a term into a commercial lease that the landlord had a duty to repair the retained parts of the building, let alone one under which its liability to repair was made absolute. To do so would be to seek to improve the contract from the point of view of the tenant rather than to give it the meaning and effect which both parties must have intended given the terms and structure of their contract. The existence of what the parties obviously intended should be a comprehensive scheme for the repair of both the demised and retained parts of the building was sufficient to exclude any liability at common law in tort to which the landlord might otherwise be subject in relation to the retained premises.

■ Sunlife Europe Properties Ltd v (1) Tiger Aspect Holdings Ltd (2) Tiger Television Ltd

[2013] EWHC 463 (TCC), 7 March 2013

The tenants of commercial premises were obliged to carry out full repairs at the end of the lease. The landlord sought damages for breach of the repairing obligations at the expiry of the lease. The central issue was whether the equipment in the premises ought to have been upgraded in line with modern standards.

In a detailed judgment, the court dealt with the scope of the repairing obligations and the measure of damages. Many of the principles set out in relation to the scope of the repairing obligations would be equally applicable to the repairing obligations on landlords in a residential context. In particular, the court found that the tenant company was entitled to perform its covenants in the manner which was least onerous to it. The standard to which the building was kept in repair was to be judged by reference to the condition of its fabric, equipment and fittings at the time of the demise. Where the requirement to put and keep the premises and fixtures in good and tenantable condition involved the replacement of mechanical and electrical plant that was beyond economic repair, the tenant company was required to replace it on a like-for-like or nearest equivalent basis, it was not required to upgrade equipment and fittings to bring it into line with current standards (unless required to do so by law or to comply with any necessary regulations.

■ Daejan Properties Ltd v Campbell

[2012] EWCA Civ 1503, 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. If this was not the position, the tenant would only have been liable to pay 40 per cent of the costs of redecoration of its flat and nothing towards the rest of the building.

The Court of Appeal overturned this decision. The two questions for the court on the construction of the clause were whether it was clear that something has gone wrong with the language of the clause and, if so, whether it was clear that a reasonable person would have understood the clause to be referring to all of the roofs and all of the external walls of the house. Overall, it was not possible to say that in saying 'premises' the drafter of the clause had made a clear mistake nor was it commercially nonsensical. As a matter of fact, the parties had made previous arrangements according to the terms of the lease. This was not a case of clear mistake, where the court could step in and construe the contract as if it said something different. The repairing covenant should be construed as meaning what it said. The word 'house' should not be substituted for 'premises'.

■ Hunt and others v Optima (Cambridge) Ltd; Strutt & Parker (a firm); Egford; Strutt & Parker LLP

[2013] EWHC 681 (TCC), 29 April 2013

The defendants built a block of flats. They let some flats directly to periodic tenants, but they sold others to the claimant leaseholders. There were numerous defects and other problems with the block and the leaseholders sued on the repairing covenants. The High Court judgment set out a useful review of the law relating to a landlord's obligations to repair under an express covenant. It is, first, necessary to construe and interpret the repairing covenant in question in the appropriate context. Part of this context here was that the landlord was, in practice and effect, the developer of the building and of the premises, in particular. The obligation under the lease was materially to maintain, repair renew and amend the main structure of the building. These words were not simply synonyms for each other, although they might well overlap in relation to any individual item of work that needed to be done. Thus, maintaining a gutter may involve clearing leaves out of it and checking that the brackets are still supporting the gutter; if the support has corroded a new support would have to be provided and that work, overall, may all be said to be maintenance, repair and renewal. However, an inadequate roof may be or become incapable of maintenance as such or even repair; it may need to be wholly replaced and, as necessary, a different type of roof provided. There will then be renewal by amendment. The judgment then dealt, in turn, with each of the 19 most significant defects complained of, including defects to the roofs, guttering drainage, deflecting floors acoustic problems and water leaks.

Tortious liability

Nuisance

■ (1) Willis (2) Willis v Derwentside DC

[2013] EWHC 793 (Ch), 10 April 2013

The claimants were homeowners. Near their house were old mine workings on land owned by the council. From one vent, large quantities of stythe gas (which although not poisonous could cause asphyxiation in mammals and birds) were escaping. The claimants were evacuated from their house from July to

December 2006, while remedial work was undertaken and the vent was capped. They brought a claim for damages in the tort of nuisance on the ground that the council had not taken reasonable steps to abate the nuisance. The High Court upheld the claim because 'a response to the nuisance ... in the form of commissioning and paying for a remedial scheme, but without either obtaining a certificate of its satisfactory completion, or committing to its monitoring and maintenance in accordance with the recommendations of its designer, falls short of the taking of reasonable steps to abate the nuisance' (para 78). The court also held that the council was liable for the costs of the claimants obtaining their own expert evidence about the gas escape before the legal proceedings as the council had refused to disclose reports and analyses being undertaken during the design and execution of the remedial works. In circumstances where the nuisance consisted of the escape of potentially asphyxiating gas, reasonable steps included the provision (on request) of information to the adversely affected property owner about the causes of the escape, the levels of gas being emitted and the design of the remedial works to abate the emission.

Access

■ New Progress Housing Association v Crawshaw

Preston County Court,
5 August 2013

The housing association made appointments with the defendant, its tenant, for its gas engineers to gain access to carry out annual gas safety inspections. He failed repeatedly to give access. The housing association applied for an injunction. A District Judge at Preston County Court made an injunction requiring the defendant to give access on three days' written notice. The injunction was to remain in force for the entire period for which the defendant remained a tenant. He was ordered to pay the housing association's legal costs in the sum of £175.

Quantum

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

■ Price v City and Town Group

Central London County Court,
12 August 2011[5]

A Rent Act-protected tenant sought damages for water ingress and draughty windows from November 2000. The landlord carried out some repairs, but the damp recurred so that the claimant commenced her claim for disrepair in 2006. In April 2010, at preliminary hearing, the court ordered the defendant to carry out extensive roof repairs within six months. The damages claim was defended on the basis that the property dated from the second half of the 19th century, the defects were not major and the claimant had been an awkward tenant, who was alleged to have refused access.

District Judge Taylor rejected the defence. The fact that the property was old did not mean that the premises should not be wind- and watertight. The defects at the property were not de minimis. While the making good works may have been minor, the eradication of the water entry was not. The defendant had adopted a dismissive attitude to the claimant's complaints and full repairs had taken slightly more than a decade, although the condition of the property had somewhat improved between 2006 and 2010. The defendant was liable from the end of December 2000.

Adopting a reduction in rental value approach, District Judge Taylor held that this should be 30 per cent on the basis that over the years the extent of the disrepair diminished. The claimant's annual average rent was £3,816, which gave an award of £10,685 from December 2000 to April 2010, a period of 112 months. District Judge Taylor stressed that the award was not based on science. He indicated that initially he had had in mind a figure of £12,000, and adopting a global approach the figure of £11,000 was more appropriate.

■ Southwark LBC v Munu and Munu

Mayors and City of London County Court,
16 May 2012[6]

The defendants counterclaimed in possession proceedings for disrepair and negligence. HHJ Matheson QC dismissed a number of defects on the basis that they did not amount to disrepair in law, but found the council liable for a loose wash hand basin in the bathroom, which had no functioning cold water supply, ill-fitting and draughty windows in two bedrooms, failure to fix properly panels and kickboards following installation of a new kitchen, a non-operative bathroom extractor fan and a disconnected flush pipe in one of the toilets at the property. He also found the council liable for back surges of sewage into the ground-floor toilet, and other parts of the ground floor, as a result of a defective external drain. The back surges occurred repeatedly over a period of approximately 18 months. The judge also found the defendants to have been unco-operative and to have refused access on occasions, but awarded them £1,250 for the various defects at the property. He also made a separate award of £2,000 for the back surges. These were 'a significant and very unpleasant intervention to the [defendants'] home and their peace and quiet enjoyment'. A further £3,000 was awarded for special damages and £500 was awarded to each of the defendants' three children.

■ Dr Malik v Brohier

Bow County Court,
25 October 2012[7]

The defendant was the assured shorthold tenant of a house from December 2004. She lived there with her three young children. Possession proceedings under Housing Act (HA) 1988 s21 were defended on the basis that there had been a failure to protect the tenant's deposit and a counterclaim for disrepair. The possession claim was dismissed and the counterclaim succeeded.

The court found that the defendant had been on notice of disrepair from December 2007. There had been significant dampness for six years in two bedrooms, and as a result the two rooms were sometimes unbearably cold. The defendant was justified in concluding that one of the bedrooms was unusable, and the other one had, in addition, draughty windows. The dampness came from a structural defect which the claimant did not remedy, namely, a defective conservatory. There were also gaps between the brickwork and the sliding doors (which had been stuffed with plastic bags), and for four years a leak from the toilet into the kitchen which led eventually to the collapse of the kitchen ceiling. A squirrel had become trapped above the kitchen ceiling and had died there. After a workman had attended the house to carry out repairs to the kitchen ceiling, he had left the ceiling with a gap with it. For about a week, maggots fell from the squirrel's corpse into the kitchen below, and later the corpse itself fell down. The court found that 'this would have been quite disgusting ... as well as being distressing and unhygienic'. The electricity supply had been installed incorrectly with the result that the defendant had been without electricity for three days, had suffered electric shocks and had been justifiably concerned about her children's safety. For another six months, until the house was properly rewired, there were temporary and potentially hazardous extension leads around the house and from a neighbour's house.

Deputy District Judge McConnell awarded damages at 40 per cent of the rent for the final six months and 28 per cent for the preceding three years and four months. Rather than

calculate what would have been a reasonable period during which the claimant should have repaired the defects, he reduced the requested damages of 30 per cent of the rent to 28 per cent for the principal part of the period. The total general damages were £15,322.66.

■ Ngoma v Dhillon

Birmingham County Court, 6 December 2012[8]

The claimant was the assured shorthold tenant of a two-storey, three-bedroom house, which she rented from the defendant between February 2006 and February 2012. She lived at the premises with her three children. The rent was £550 per month.

She brought a claim in respect of disrepair throughout the period of the tenancy, namely:

- penetrating dampness to large front bedroom and rear bedroom causing dampness and mould growth as a result of defects to the building fabric (including perished brickwork and mortar);
- breakdown in the seal to the double-glazing unit in the larger front bedroom;
- rising dampness to front-living room with evidence of damp to rear living room;
- damp and mould growth in kitchen aggravated by leaks from bathroom above;
- leaks from the seals around the bath and taps and various other defects to sanitary fittings;
- degraded seal and leak from sink to kitchen unit below;
- various structural cracks; and
- incomplete drainage work leading to a foul odour, so that garden could not be used (from November 2010).

The claimant contended that, as a result, the property had been cold, damp and smelly and incapable of receiving decoration in places. The property was unsightly and the claimant was concerned about possible structural movement. She suffered the inconvenience of having to mop up leaks and was worried about the health of her children. The defendant counterclaimed for arrears in the sum of £1,300. The claimant defended the counterclaim on the basis that any arrears proved had been waived by the defendant.

HHJ McKenna accepted the claimant's evidence in full and awarded her general damages of £27,720 (70 per cent of the contractual rent over the relevant period) together with interest in the sum of £1,663.20 making a total of £29,383.20. The judge dismissed the defendant's counterclaim.

■ Hammersmith & Fulham LBC v Millani-Kalkhorani

Willesden County Court, 14 January 2013[9]

In possession proceedings for rent arrears, the defendant counterclaimed for disrepair. She complained that since the start of her tenancy in May 2005, there had been problems with a blockage in the pipe taking waste from her bathroom resulting in the toilet and wash hand basin being blocked. The toilet leaked from the back into the kitchen below through the ceiling light, which made the electricity in the kitchen short circuit so that the tenant was often without power. The toilet was renewed in December 2005, but the problems continued. At the end of 2007, the leak started again from the back of the toilet and, in 2008, the toilet started blocking up regularly with continued problems with the electrics. The toilet was replaced for a second time in January 2009. During 2009, things were more or less alright, but through 2010 there were further problems with the water supply, toilet and boiler.

A new boiler was installed in June 2010, but even that did not work until July 2010. The boiler installation involved 15 visits from the council and the boiler manufacturers, and it was still not satisfactory at trial. There were also missing banisters, defective windows and a defective front entrance door. When the premises were inspected by a single joint expert in 2012, he found them to be in a poor condition with a lot of repairs outstanding and that the repairs which had been undertaken were not of a professional standard. The tenant complained that, during 2006, she used to sleep in the basement of a shop where she had started a business because there was no hot water in her flat and very often no electricity. She also used to go to Charing Cross Hospital, where friends worked, to have a shower.

HHJ Copley adopted a broad-brush approach to the counterclaim. He accepted that works had been undertaken from time to time, but considered that it was clear that the works were not carried out in a proper fashion or reasonable time. With the exception of the ceiling and the replacement of the toilet in January 2009, remedial works were, at best, temporary and, at worst, useless. It was obvious that no reasonable skill, care or materials were used to deal with the leaks, damp, electrical or other defects in this property. Other obvious matters such as the banister, defective front door and windows were simply ignored. It was also clear that there was no proper making good in relation to the works which had been done.

Since the extent of the disrepair had varied, the judge decided to look at it in the round. He awarded £2,500 per annum for the 3.5 years from mid-2005 to December 2008/January 2009, amounting to £8,750. Although the defendant was not complaining in 2009, there was disrepair and she was entitled to a sum awarded at £750 for that year. The judge awarded a further £1,000 per annum for 2010, 2011 and 2012, resulting in a total award of £12,500 plus remedial works and costs.

■ Olinski v Islington LBC

Lambeth County Court, January 2013[10]

The claimant was the long leaseholder of a one-bedroom flat in Islington, north London, from 2002. The premises suffered from serious subsidence caused by tree roots. The front bay window and rear extension were pulling away from the main structure. There was a bow to the side elevation of rear extension. The partition wall to the bedroom was warped. There was some dampness to the front hall and living room. In around 2003, the pillars at the front main entrance moved and had to be propped up and cemented. Scaffolding was up for nearly ten years while the council investigated and monitored the subsidence. Ms Olinski was in temporary accommodation from 2006 to 2012 in a two-bedroom flat.

The claim settled for £18,044, namely, £15,544 general damages for a period of eight years and four months, six years of which were spent in alternative temporary accommodation, and £2,500 special damages. The council also agreed that there be a reinspection by the structural engineer after a period of six months and to carry out any further works recommended by the expert. The council was also to maintain a tree to the rear of the premises and indemnify the claimant for a period of 15 years against the cost of further works in respect of subsidence. In the event that there was any further insurance claim in respect of subsidence, the council agreed that the costs would not exceed the claimant's share of the excess on the insurance policy already charged to her.

■ Asghar v Barnet LBC and Minoan Investments Limited

Central London County Court, 23 January 2013[11]

The claimant was a non-secure tenant of a one-bedroom flat let to him by the council that had leased the property from the freehold owner. The claimant sought damages for the damp condition he had suffered at the flat from March 2007 until he was rehoused in August 2010. He also made a claim for psychiatric injury, namely, that the depression and panic disorder from which he had suffered historically had been triggered by the disrepair. The council made a CPR Part 20 claim against the owner.

It was found that the two outside walls were damp at the time when the claimant moved into the flat and that both the council and owner knew of the damp, at the latest by March 2007. In addition, it was found that the owner knew that the damp was likely to be due to structural problems, namely, rising and penetrating dampness rather than just condensation. The court found that the

council's file was plainly incomplete. The absence from the council's disclosure of any record of a complaint before October 2002 did not mean that the claimant did not complain before this date. The lack of documented complaint meant only that no note was taken and/or that any note had since been lost. Conditions deteriorated between 2007 and 2009 with no practical offer of rehousing until June 2009. By that time, the claimant was ill and his depression continued long after September 2009.

HHJ Faber awarded damages from March 2007 until the end of October 2009, when she held that the council had made a reasonable offer of accommodation. She discounted an earlier offer of alternative accommodation on the basis that it was reasonable for the claimant to refuse to move there as the front door had been kicked in. She awarded damages at 35 per cent of the rent of £386.04 per week amounting to £16,745.82 over 130 weeks.

The judge also awarded damages for the claimant's psychiatric illness. She found that the damp conditions were the main, although not the only, cause, since the claimant had other issues in spring 2009 which also contributed to the onset of the renewed illness so that the damages should be discounted by 20 per cent for those other problems. She held that the case fell within the moderate Judicial Studies Board bracket (although it was difficult to decide where without a prognosis), given that the claimant was still suffering in January 2012 from the illness brought on largely by the council's breach of contract. The judge held that the appropriate figure was £10,000 discounted by 20 per cent to £8,000. The total award of damages was therefore £24,745.82.

The judge also held that the owner was liable to the council in the same sum as that owed by the council to the claimant, despite the fact that the owner was being paid a much lower rent of £650 to £720 per calendar month as the owner was aware of the difference in rents. She also dismissed an argument that the council had failed to mitigate its loss as it could have done the repairs itself, since there was nothing in the head lease which would have permitted the council to do the extensive work required to put right the rising and penetrating damp.

■ Vaughan v Mis Properties Ltd

Edmonton County Court,
23 May 2013[12]

The claimant was the assured shorthold tenant of a two-bedroom, first-floor flat in a two-storey, purpose-built block, from 10 June 2009 at a monthly rent of £975. She lived there with her three-year-old daughter. The claimant complained of a number of problems, namely:

- from November 2009, defective gas central heating and dampness and water penetration to most rooms, resulting in condensation damp, mould growth, defective plaster and problems with the electric installation;
- due to defective works by the landlord's contractors, defective double-glazed units to front bedroom window and in reception room and defective tiling in bathroom and WC;
- from the start, uneven floorboards (the claimant trod on nails) and an unsafe fire escape due to a missing vertical member;
- building works and scaffolding for the erection of an additional storey immediately above from September 2012, holing plaster and interfering with quiet enjoyment and use of common parts; and
- communal garden overgrown and littered with debris from the building works: when remedied, access pathway seen to be seriously cracked and uneven.

At trial, Deputy District Judge McCormack held that the effect of a previous debarring order was not only to exclude the witness statement which the landlord had served the day before, but also to debar the defendant from defending. Accordingly, he entered judgment and went on to assess damages. He accepted the claimant's evidence in its entirety. The period of loss was 3.75 years (ie, from August 2009 to 23 May 2013). General damages were awarded at a rate of £3,500 per year, being around 30 per cent of the rent, namely, £13,125, plus a ten per cent uplift in keeping with *Simmons v Castle (No 2)* (above), ie, £1,312.50, making a total general damages award of £14,437.50. Special damages of £865.30 were also awarded and interest. The total exceeded the £15,000 limit originally put on the claim, so the judge raised the limit accordingly.

■ Read v Notting Hill Housing Trust

Bow County Court,
13 June 2013[13]

Ms Read was the assured shorthold tenant of a ground-floor, two-bedroom flat owned by Notting Hill Housing Trust. She lived there with her two young children. The rent of the property was £289 per week. A few months after Ms Read moved into the property, she reported to the local authority environmental health department, as well as to the housing trust, that rats were getting into the property. Despite reporting this, nothing was done by the housing trust to repair the holes in the floorboards which were where the rats were able to enter the flat. One of the tenant's children refused to continue living in the flat because of the rats and had to go to live with her grandmother.

As well as the problem with the rats, there was also undisputed evidence of rising damp in the flat and a problem with a defective boiler which produced hot water only intermittently. The landlord eventually offered the tenant alternative accommodation, but this was over a year after the rat problem was first reported to the housing trust.

Awarding damages for disrepair, District Judge Davies held that a reasonable period for the landlord to have fixed the holes in the floorboards after notification of the rat problem would have been 28 days. She awarded damages on a 'broad-brush' basis, and considered that the rat infestation was by far the most serious aspect caused by the disrepair. Following the cases of *Dadd v Christian Action (Enfield) HA* (1994) 28 September, Central London County Court; December 1994 *Legal Action* 18 and *English Churches Housing Group v Shine* [2004] EWCA Civ 434, 7 April 2004; November 2004 *Legal Action* 28, the judge held that the case of *Dadd* was on all fours with this case with the important distinction that in *Dadd* the rats did not enter the flat, whereas in this case they did.

She awarded damages at the rate of 80 per cent of the contractual rent for the period commencing 28 days after notification of the rat problem until a reasonable offer of accommodation was made to the tenant. This period was 60 weeks resulting in damages of £13,872. For the period after the tenant had refused what the judge held to be a reasonable offer of accommodation, she awarded damages at the rate of 20 per cent of the contractual rent until the termination of the tenancy amounting to £953.

The total damages were therefore as follows:

- general damages £14,825;
- special damages £1,000;
- minor damage to property minus £150; and
- interest on damages £940.

The claimant had also beaten her own CPR Part 36 offers both one made before 1 April 2013 and one made after that date. She was, therefore, also awarded an extra ten per cent on her award amounting to £1,661 plus further interest under Part 36 amounting to £130. The total award was, therefore, £18,406.

■ Aden V Birmingham City Council

Birmingham County Court,
3 July 2013[14]

The claimant lived with his wife and their six children (aged from six to 14) in a three-bedroom house rented from the defendant from 9 October 2006. The average weekly rent was approximately £89 (equivalent to £4,641 per year).

The claimant complained about a number of problems:

- holed and defective plasterwork from the start of tenancy until some works were carried out in January 2012 following a letter before action;

■ intermittent rainwater penetration into son's bedroom throughout tenancy, worse during heavy rainfall (three to four times per year);
■ water penetration from first-floor bathroom into first-floor kitchen for 22 months;
■ leaking pipe in kitchen for six months;
■ boiler breaking down at least once per winter and not repaired for ten to 14 days each time;
■ uneven, loose and defective flooring from start of tenancy;
■ defective extractor fan, perished window board and defective seals in bathroom; and
■ other minor defects, including a bowed canopy over the front door and a loose electrical socket.

HHJ McKenna accepted the claimant's evidence, including that in relation to notice. He questioned the reliability of the council's repair records, stating that 'they are only as good as the information put into them'. He held that the extractor fan was part of the structure, and so within Landlord and Tenant Act (LTA) 1985 s11(1)(a), distinguishing the decision of the circuit judge recorded in *O'Neill v Sandwell MBC* [2007] EWHC 2004 (QB), 18 December 2007. However, he refused to make an order for specific performance, accepting the local authority's indication that it intended to carry out the schedule of works compiled by the claimant's expert.

HHJ McKenna took a 'broad-brush' approach in calculating a global damages award. The period of loss was taken to be six years, with some periods being worse than others and some problems being intermittent. General damages were awarded at a rate of £1,750 per year, being around 38 per cent of the rent, namely, £10,500 plus a ten per cent uplift in line with *Simmons v Castle* (above), namely, £1,050 making a total award of £11,550. He also awarded special damages of £2,100 (100 per cent of the amount claimed) and interest. The total award was £13,850.

■ Maloku v Southwark LBC

Lambeth County Court, September 2013[15]

The claimant brought proceedings for disrepair at the studio flat which she rented from the council at a rent of £100 per week. From mid-2008, there was dampness to the walls and chimney breast in the living room causing the plaster to crumble. The damp spread to the kitchen and hallway causing further damage to the plaster. Repairs were carried out in July 2011, but dampness returned to the same areas. Further repairs were carried out in or around February 2012. Ms Maloku and her daughter went to live with her mother from around late 2010 until mid-2012 to get away from the damp conditions. On 18 August 2009, the claimant was seen at the local A&E department with throat and chest tightness. On 23 August 2009, she was seen at A&E again with left-sided abdominal and chest pain.

The claimant's minor daughter also suffered from a number of respiratory infections and bronchiolitis as a result of the disrepair. From 1 November 2010 to 3 February 2011, the claimant's daughter suffered ongoing respiratory coughs and colds. She was particularly ill during the period 3 February 2011 to 22 February 2011, which coincided with an attendance at a walk-in centre and two attendances at A&E: a diagnosis of bronchiolitis was made. From February 2011 to 21 March 2011, the claimant's daughter had residual symptoms, including minor coughs and colds.

Medical evidence was obtained from Professor Douglas, a consultant chest physician, that the claimant had had a past history of asthma which had ceased to be troublesome. An adverse environment comprising cold, damp and mould had led to a recurrence of her asthma characterised by wheeze, both day and night, while resident at the accommodation and that this was foreseeable. He concluded that, on the balance of probabilities, the worsening of respiratory symptoms experienced by the claimant was caused by moving into the adverse environment in her flat. He gave a reasonably good prognosis for the future, but this was contingent on living in suitable warm, dry accommodation.

In respect of the claimant's daughter, Professor Douglas stated that, on the balance of probabilities, her daughter's symptoms while they were resident in the accommodation were causative in terms of that environment and, for a few weeks or a month or two, there would probably be some transient hangover beyond this period. There was no evidence of long-term effects beyond those which may be expected in a constitutional sense following on from her mother's skin complaints and childhood asthma. A settlement was achieved in the sum of £17,000 for claimant, including £700 special damages, and £3,000 for her daughter.

■ Voysey v Elias

Croydon County Court, 20 September 2013[16]

The claimant was the assured shorthold tenant of the defendants. She lived with her adult daughter and son. The latter had significant visual impairments and was registered as blind. The rent on the property was £1,050 per month. The property was affected by disrepair consisting of an inoperative boiler resulting in a complete lack of heating and hot water, a relatively minor but persistent leak in the conservatory roof and defective drainage in the bathroom. The lack of heating and hot water was the most serious aspect of the disrepair as it had necessitated Ms Voysey carrying saucepans of boiling water through the house to fill the bathtub, at some risk to her son. The defendant had been notified of the inoperative boiler by British Gas, which had deemed the boiler unsafe, and by the council, but had refused to fix it citing a lack of funds. Following a contested trial, HHJ Ellis awarded Ms Voysey general damages in the sum of £4,750 consisting of £1,250 for three-and-a-half months without heating and hot water, £3,000 for 29 months in respect of the leak in the conservatory and £500 for two years of faulty drainage in the bathroom, described as the 'least serious' aspect of the claim.

Costs

■ Engleman v London & Quadrant Housing Trust Ltd and Academy of Plumbing Ltd

22 March 2013

A tenant of the housing trust reported a leak into her flat. The housing trust's managing agent called in a plumber from the Academy of Plumbing Ltd. The next day, the tenant was injured when the ceiling of her flat collapsed on her, possibly because the leak had not been properly fixed. She brought a claim for personal injury damages against the housing trust and the plumbing company. This was settled when the company offered £10,000 and agreed to pay the costs. On the claim for costs, all costs were disallowed by the principal costs officer because the CFA the tenant had entered into with her solicitors only covered the claim against the housing trust. The costs master dismissed an appeal. The terms of the CFA, together with the absence of any arrangement between solicitor and client for payment of the costs of pursuing a claim against the plumbing company, meant that no costs were payable by the company.

■ Newman v Framewood Manor Management Company Ltd

[2012] EWCA Civ 1727, 19 October 2012

This case involved a claim by a long lessee for breach of the repairing obligations in her lease in relation to blocking off the doorway to the swimming pool serving the block and allowing the jacuzzi to fall into disrepair, and lack of proper maintenance of the gym equipment ([2012] EWCA Civ 159, 21 February 2012; December 2012 *Legal Action* 13 and 14). At first instance, the judge held that an exoneration clause in the lease ruled out liability for defects not covered by insurance; however, this was overturned on appeal ([2012] EWCA Civ 169), and the claimant was awarded damages of £5,000 in addition to the £1,425.50 which had been awarded by the trial judge for other items and not challenged.

A further hearing was then held in relation to the costs of the claim, which far exceeded the amounts recovered by the appellant. The court found that the appellant was the overall winner, having succeeded on all but one head of claim, in relation to tree roots, for which there should be a five per cent discount as regards her costs.

In relation to the general issue of proportionality, the court held that the appellant had had to take the proceedings in order to recover the damages which she recovered and to secure an undertaking regarding the reinstatement of a doorway. Whether or not the costs of achieving those results were disproportionate would be addressed on the assessment of costs, but the Court of Appeal would not qualify her right to recover costs on the ground of disproportionality.

In relation to the appellant's conduct, an objection that she had failed to comply with the arbitration clause in her lease was plainly unfounded as the respondent never applied for a stay pending arbitration. Although the proceedings commenced four days earlier than the appellant had indicated that the action would be initiated, this had been completely irrelevant to the course of proceedings and the need for the appellant to pursue them to judgment and from there to appeal.

As for the allegation that the appellant had acted unreasonably in taking proceedings when the respondent was seeking to pursue an orderly refurbishment, the appellant's complaints about disrepair had not been substantially addressed before the commencement of proceedings and, given that she won, the appellant was right to insist on her legal rights under the lease. Accordingly, it was not unreasonable for the appellant to have commenced proceedings at the time and in the manner in which she did.

The court did not consider that the case had been made out that the appellant refused unreasonably to enter into discussions or mediation given that she had put forward dates for meetings. The respondent also argued that the appellant did not have a reasonable approach to negotiations because she sought to impose several, non-negotiable conditions in relation to a proposal for a without-prejudice meeting. What the court had to concentrate on were the offers made by the respondent which the appellant failed to accept. The best offer was that each party should pay its own costs, and made no offer of compensation. In the circumstances, it could not be described as being the type of offer the refusal of which would amount to unreasonable conduct that would deprive the appellant of her costs.

The respondent was therefore ordered to pay 95 per cent of the costs of the proceedings below. The court also made an order, under LTA s20C, to the effect that the respondent's costs, up to and including the trial, were not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the appellant under the lease.

Environmental Protection Act 1990

■ Bentley-Thomas v Winkfield Parish Council

[2013] EWHC 356 (Admin), 5 February 2013

The council enhanced the play and activities equipment at a recreation ground. The appellant complained about increased noise levels affecting the enjoyment of her home and contended that the noise was a 'statutory nuisance' (para 1). She gave notice under Environmental Protection Act (EPA) 1990 s82(6). She was not satisfied with the response and brought a private prosecution under section 82. After a trial at which the judge had preferred the council's case to the evidence of the appellant's expert, the council was acquitted and the appellant was ordered to pay costs of just over £18,000. The High Court allowed an appeal against the costs order. Such an order should be made only if a prosecution should never have been brought, which was not the case here. Costs were ordered to be paid from central funds.

■ Murphy v Lambeth LBC

Camberwell Green Magistrates' Court, 31 October 2012[17]

A top-floor flat was affected by severe condensation damp and mould caused primarily by a completely uninsulated roof. An environmental health officer (EHO) confirmed that there was a statutory nuisance on the ground that the property was prejudicial to the tenant's health on account of mould growth. Works recommended to abate the nuisance and prevent a recurrence were to upgrade the central heating, to carry out substantial insulation work to walls and ceilings, and to install double glazing. This work would be disruptive. The insulation work would involve moving all services to the new outer skin of the wall or ceilings. The expert advised that the work could be done with Ms Murphy in the premises, but that they would need to be planned carefully.

Following service of the 21-day warning notice, the defendant wished to carry out the works. The tenant demanded to know how the work would be done and sought confirmation that one room would be done before the next started. In the absence of such confirmation, she refused access. Subsequent attempts to gain access to wipe down the mould failed because the council's workers turned up without appointments.

EPA s82 proceedings were issued to force the defendant to abate the nuisance and to do the works to prevent a recurrence. The prosecution was defended, essentially on the basis that Ms Murphy had refused access. The council argued that this amounted to an abuse of process. In addition, the council argued that the tenant did not use the heating. Heating records were obtained from the heating supplier and an expert inspected, who confirmed that the heating system was undersized and that the heating was used satisfactorily by Ms Murphy. Accordingly, the only real defence was access, but the council conceded the point and pleaded guilty.

At trial, the judge decided not to fine the defendants, but to increase the damages element instead. The tenant argued for a damages award calculated on the principles in *Shine* (above). The judge rejected this, but awarded £4,000. This was on the basis of the severity of the problems, in particular:

- that the property was uninhabitable; and
- the all-pervasive nature of the damp, in particular, that her children's school uniform, and her clothes, smelt.

Repairs worth £15,000 were also ordered and the defendant was ordered to prevent a recurrence of the problems. The judge also awarded substantial costs to the tenant without any reduction.

■ Morally v Lambeth LBC

Camberwell Green Magistrates' Court, 2 August 2013[18]

In a block of flats, the tenant's flat was affected by a leak from the flat above due to defective tiling. The leak was relatively minor and had been ongoing only for a short period, so it would only have been a small claim. An EHO concluded that a statutory nuisance existed because the damp was prejudicial to the tenant's health and was a common law nuisance. Accordingly, a 21-day notice was served.

Despite replastering and redecorating the ceiling, the defendant did not stop the leak. As a result, the nuisance continued, although the premises were no longer prejudicial to health. Although the defendant indicated that it would defend the case, it pleaded guilty at the first hearing. The judge ordered repairs and redecoration. He also fined the defendant £1,335, and awarded the tenant £500 compensation and her legal costs.

1 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/211288/EHS_Headline_Report_2011-2012.pdf.
2 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/211324/EHS_HOMES_REPORT_2011.pdf.
3 Available at: www.justice.gov.uk/downloads/legal-aid/funding-code/lord-chancellors-guidance.pdf.
4 Available at: www.justice.gov.uk/downloads/legal-aid/legal-aid-reform/legal-aid-reform-faq.pdf.
5 Barbara Zeitler, barrister, London and Scully and Sowerbutts Solicitors, London.

6 Barbara Zeitler, barrister, London, instructed by Southwark LBC.
7 Liz Davies, barrister, London and Gurminder Birdi and Suzanne Bird, solicitors, Moss & Co, London.
8 Zia Nabi, barrister, London and Mike McIlvaney, solicitor, Community Law Partnership, Birmingham.
9 Samuel Waritay, barrister, London and Gabriel O'Connor, solicitor, Oliver Fisher Solicitors, London.
10 Beatrice Prevatt, barrister, London and Charlotte Collins, solicitor, Anthony Gold Solicitors, London.
11 Sam Madge-Wyld, barrister, London and Saul Marine, solicitor, Marine & Co Solicitors, London.
12 Nicholas Nicol, barrister, London and Serdar Celebi, solicitor, Foster & Foster Solicitors, London.
13 Alastair Panton, barrister, London and Karina Farid, solicitor, SA Law Chambers Solicitors, Ilford, Essex.
14 Nicholas Nicol, barrister, London and Mike McIlvaney, solicitor, Community Law Partnership, Birmingham.
15 Charlotte Collins, solicitor, Anthony Gold Solicitors, London.
16 Connor Johnston, barrister, London instructed by Paul Wallace of Battersea Law Centre®, London.
17 Timothy Waitt, solicitor, Anthony Gold Solicitors, London.
18 See note 17.

Beatrice Prevatt specialises in housing law with the Housing Team at Garden Court Chambers. She is co-author, with Jan Luba QC and Deirdre Forster, of *Repairs: tenants' rights*, 4th edition, LAG, 2010. The author would like to thank the colleagues at notes 5–17 for the transcripts or notes of judgments.

Prosecuting landlords: an update – Part 1

The UK government has committed itself to tackling 'rogue' private landlords. However, the task of enforcement has been left to hard-pressed local authorities and other enforcement agencies. In this update, Jan Luba QC reviews the use of criminal sanctions over the past year to help drive the worst landlords out of the renting business or force them to improve housing conditions. Part 1 of this article addresses prosecutions for unlawful eviction and new policy initiatives on enforcement. Part 2 will review prosecutions for other housing-related offences and will be published in February 2014 *Legal Action*.

INTRODUCTION

In an article in this journal last year, written with my colleague Edward Fitzpatrick ('Landlords in the dock: prosecuting to protect tenants', July 2012 *Legal Action* 44), I sought to shine a light on the oft-neglected backwater of housing law that is the enforcement of criminal sanctions against private landlords. It is a field in which local councils' tenancy relations staff and environmental health officers are too often the unsung and unappreciated heroes. That article contained both an introduction to the range of criminal measures available and several examples of their use in 2011 and 2012. These articles are intended to bring readers up to date with what has happened recently in this field.

POLICY DEVELOPMENTS

In policy terms, there appears of late to have been a major shift in emphasis towards effective action addressing unlawful activity by landlords. In August 2012, the UK government published *Dealing with rogue landlords: a guide for local authorities* (Department for Communities and Local Government) setting out guidance on the use of available powers, including criminal sanctions.[1] The document makes plain that 'where a landlord persists in illegally letting property, local authorities should prosecute' and then 'consider naming and shaming prosecuted landlords' (pages 17 and 19). It gives examples and full case studies as well as containing a detailed summary of available powers (at Annex A). In an announcement to accompany the launch of the guidance, the then Housing Minister said: 'I want to see all agencies from councils to the police and the UK Border Agency using the full range of powers at their disposal to work together on a national clampdown towards ridding our communities of this problem once and for all.'[2]

In March 2013, the UK government gave funding of £800,000, apportioned among four London boroughs, to help those councils tackle the phenomenon of illegal use of 'beds in sheds'.[3]

In July 2013, the then Housing Minister wrote to every local council in England indicating that: 'This government is determined to crack down on rogue landlords who have no place in the sector', and inviting those councils to bid for a share of a new £3m pot of funding 'to help tackle rogue landlords in the private rented sector'.[4] The accompanying announcement advised that a 'cross-government team will support successful councils as they work to take these illegal operators to task'.[5]

Also in July 2013, the Communities and Local Government Select Committee published a report on the outcome of its enquiry into private letting: *First report of session 2013–14: The private rented sector*.[6] On enforcement of minimum standards it recorded that:

> *A number of witnesses told us that, while local authorities had the powers they needed to deal with such unscrupulous landlords, often these powers were not used effectively. The Residential Landlords Association noted that 'according to figures from Shelter, just 487 landlords in England were prosecuted last year; a figure that is remarkably low out of an estimated 1.2 million landlords in total'. It said that 'the problem is not a lack of powers, but the willingness and ability of local authorities to enforce their existing powers'* (para 28).