

Housing Disrepair
Legal Obligations
Good Practice Guidance

January 2002

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Foreword

The purpose of this guidance is to advise on good practice in relation to the management and delivery of housing repairs while emphasising the legal obligations and suggesting appropriate responses where there are threats of litigation.

A high quality repairs service is a key element in the provision of good quality rented housing. Also it is an essential element in achieving high levels of tenant satisfaction, improving the landlord and tenant relationship and protecting health and safety.

A number of local authorities and other landlords have an excellent record in the provision of housing repairs service, but there is scope for improvements, in some cases significant, by many others.

There exist other publications advising on good practice on the delivery of a housing repairs service¹. This Guidance does not attempt to duplicate that advice, but is intended to complement the existing guidance. A poor repairs service increases the scope for legal action brought by tenants which diverts resources away from housing management, maintenance and improvement. Threats of litigation may be indicative of various factors, such as:

- poor condition of the stock and/or inadequate programmes to improve conditions;
- a failure of the repair service to respond to complaints adequately or at all;
- the way the internal complaints procedure works or is perceived to work; and/or
- the attitude of officers when dealing with tenants' complaints and concerns (for example, a confrontational approach, a 'blame the victim' attitude, or housing officers' acting too vigorously as 'holders of the purse strings').

Whatever the cause or causes of threats of action, there is no question that litigation is an expensive way to resolve problems. It disrupts programmes and departmental activity. Trying to avoid threats of litigation, or at least reducing the likelihood, should be a part of a Best Value approach to housing.

This guidance is directed primarily to local authority policy staff and those involved in providing housing repair services. This includes legal and environmental health officers both in-house and external consultants. Much of this good practice guidance will be relevant to registered social landlords and private sector landlords.

The shaded paragraphs indicate examples and suggestions for good practice from local authorities, professional bodies and individuals gathered during the background work to inform the preparation of this Guidance.

¹ See in particular, *Guidance on Good Practice 3: Council Housing Repairs* (1993) Commission for Local Government Administration in England, and *Good Practice Briefing, Issue 13: Housing and Health* (1998) Chartered Institute of Housing, Good Practice Unit, and other guidance and advice issued by the Audit Commission and the Chartered Institute of Housing.

Background to this Guidance

In 1995, the Department for Transport, Local Government and the Regions (DTLR) (then DoE) commissioned a study directed at assessing the nature and extent of the impact on local authorities and housing associations arising from tenants prosecuting their landlord under the Statutory Nuisance provisions of the Environmental Protection Act 1990². That study also looked at the problems associated with civil actions for housing disrepair which may be brought by tenants against their landlords. One recommendation made by that study was that consideration should be given to producing guidance and advice to authorities and associations. Another important conclusion from that research was that for a tenant's case to succeed there was usually a history of defects which had been dealt with incompetently.

This guidance is the result of a project sponsored by the Department for Transport, Local Government and the Regions (DTLR). The overall aim of this project was to review the current legal environment and current local authority practice, and to prepare good practice guidance for local housing authorities on minimising the threat of legal action based on allegations of unsatisfactory housing conditions and responding effectively to any legal action.

Nine local authorities and housing associations agreed to be involved. In addition, interviews were carried out with individual experts and representatives of related professional and other bodies. These interviews and case studies informed the guidance and provided examples and suggestions for good practice.

The law and practice relating to housing disrepair will continue to evolve, and, because of this, it is important for all housing staff and practitioners to keep abreast of changes by ensuring that they have access to information about such changes and the ways that they may affect their day to day practices. This also highlights the need for all staff involved to receive regular training and up-dating.

The Guidance

Recognising that housing disrepair law and practice will continue to evolve, the guidance has been drafted around principles which should remain constant. References to the current (November 2001) legal position and appropriate practices are used only where necessary to illustrate the advice and guidance.

² See *The Use of Section 82 of the Environmental Protection Act 1990 against Local Authorities and Housing Associations* (1996) HMSO.

CHAPTER 1

Introduction to the Guidance

1.01 The guidance covers the following areas:

- a. **Obtaining and maintaining comprehensive stock information**
Including carrying out local stock condition surveys, and having full and detailed individual dwelling records.
- b. **Maintenance, repairs and improvement work**
Including the need for pre-letting inspections and works recognising the importance of effective logging of, and response to, complaints and emergency and other unforeseen problems. The proper identification of the appropriate remedial works, the effective ordering of those works, the carrying out of works quickly and the monitoring of the works to ensure the identified problem has been dealt with.
- c. **Ensuring effective and positive response to threats of legal action**
Including establishing good systems and procedures, and avoiding a defensive and adversarial response. Ensuring good legal support is available and used.
- d. **Establishing good communications**
Including between departments, between disciplines and between landlord and tenant.
- e. **Monitoring of systems and procedures**
Including performance monitoring and regular reviews of all system and procedures.
- f. **Setting up, maintaining and publishing a system for dealing with complaints about administration etc (not about condition), and providing a safety net such as an arbitration procedure**
Including encouraging tenants and others to input into the systems and procedures, and, where these fail, providing a safety net.

1.02 The general themes running through this guidance are:

- securing an improved service to tenants; and
- provision of better quality housing.

1.03 In addition, the guidance underlines the importance of regular training of all staff involved in housing repair and maintenance, ensuring they are aware of the landlord's responsibilities and obligations and are updated on legal changes (see Annex C).

PRACTICE AND PROCEDURES

The provision of a responsive and well-managed housing service depends on the inter-relationship between four main areas:

- i. The stock.
 - ii. The tenants.
 - iii. Staff.
 - iv. Financial resources.
- 1.05 Housing is a basic human need. However, the objective should be to provide more than just shelter. The home is the social, cultural and economic structure established by the occupants; and the dwelling should be of adequate size, have sufficient facilities and amenities to enable the occupiers to create their home. It should provide a safe and healthy environment for the household, particularly for those who make the most use of dwellings – the elderly, the very young, the sick and the unemployed.
- 1.06 Ensuring the housing stock is properly maintained and managed requires adequate information on conditions, identification of tenants' needs and concerns. This must be supported by effective consultation and information to tenants, properly planned preventative maintenance and dealing with complaints and enquiries quickly and effectively.
- 1.07 Landlords should make certain their tenants are aware of how to report problems and what to expect when they do so. If occupiers are clear about how the system works and the limits of the landlord's obligations they are less likely to go elsewhere for advice and help.
- 1.08 Competent and well trained staff, and clear and effective systems are essential to effective management of their stock and to provide a responsive service to their tenants. Dealing with housing is not merely dealing with buildings. It is primarily dealing with people and their homes. Systems are necessary and should be geared to this primary purpose, but cannot cover all circumstances. To provide a responsive and effective service, the systems should not be rigid, but require and allow for staff judgments.
- 1.09 Financial resources have an obvious influence on the condition of the housing stock and on the service that can be provided. The practices, priorities, systems and procedures adopted must reflect the availability of these resources.
- 1.10 The guidance considers basic objectives to be achieved and gives some examples and suggestions on how these objectives can be met drawing on case studies and interviews. There may be many other approaches, and the guidance is not intended to be proscriptive.
- 1.11 It should be noted that the guidance is non-specific and does not attempt to focus on a particular legal action or differentiate between possible legal actions. This is one of the primary recommendations for good practice – that landlords should be familiar with, and keep up-to-date on, all the possible legal actions and the stages involved in each, identifying deadlines and timescales. An outline of a Landlord's responsibilities in relation to repairs are outlined at Annex A.

CHAPTER 2

The Guidance

COMPREHENSIVE STOCK INFORMATION

- 2.01 A detailed knowledge of the age, type and condition of the housing stock should inform all aspects of housing management and provide a sound basis for effective asset management. In relation to repair and maintenance, it will ensure policies and programmes are evidence-based, informing both planned preventative maintenance and re-active repairs.
- 2.02 Comprehensive stock information will also help identify where there is the greatest risk of litigation or other actions, for instance those properties prone to dampness, or where excessive sound transmission could affect the health of tenants.
- 2.03 There are two main elements to obtaining and maintaining comprehensive information on stock condition:

Local stock conditions surveys

- a. Normally, stock condition surveys are sample surveys, providing one source of information feeding into a wider database of property condition. These should be integrated with day-to-day information on estates and individual dwellings. They can be used for updating information, or directed to providing specific data.
- b. Detailed advice and guidance is given in *Collecting, managing and Using Housing Stock Information – A Good Practice Guide*³.

Individual dwelling records

- c. There should be detailed records for each dwelling. As well as basic building information, the property file should include a complete record of all contact between the landlord and occupiers, whatever the reason for that contact eg, provision of information on improvement programme or a repairs handbook.
- d. The objective should be to have a comprehensive data base with full details of every unit of accommodation, perhaps to the extent of including digitised records of all incoming documents and telephones calls. These records should be capable of being accessed speedily to enable effective responses to be made to complaints or threats of legal action.
- e. Comprehensive records will not only inform policies and programmes, but will allow for monitoring the condition, and the repair and improvement history of individual dwellings. Individual housing records should include full details of:

³ DETR (2000).

- i. a description of the property, including the age, the dwelling type (eg, flat, house, or maisonette), the form of construction (eg, traditional, or non-traditional), the construction details (eg, window type and floor construction) the number and type of rooms, the facilities present, and the form of water and space heating;
- ii. complaints and enquiries, including the name of the person complaining or enquiring, and, where they are not an occupier, their address;
- iii. any inspections or surveys carried out, including the name and designation of the surveyor and the report (in particular, the conclusions and recommendations);
- iv. the response to any complaint or enquiry, or the actions taken as a result of any inspection or survey. Where this involved no action, the reasons for that decision;
- v. any works of repair, improvement or alteration, including the materials and trades involved; and
- vi. any legal action, or threatened action, including action taken.

As well as details of works that have been completed, records should include the step-by step details of works in progress, particularly where more than one trade is involved, and details of any delays that may occur.

CHAPTER 3

Maintenance, repairs, improvement and alterations

PLANNED PREVENTATIVE WORKS

- 3.01 Detailed and accurate knowledge of stock is needed for effective preventative maintenance programming. This should reflect the differing deterioration rates of elements of dwellings. Considered and effective interrogation of comprehensive databases should identify when action will be necessary, allowing for ear-marking of funds well in advance.
- 3.02 Good and comprehensive planned preventative maintenance can significantly reduce, but not eliminate, the need for a reactive repairs service.

PRE-LETTING INSPECTIONS AND WORKS

- 3.03 Whenever a dwelling is vacated, it should be inspected and any disrepair remedied. There should be a detailed report on the dwelling record of the works carried out.

REACTIVE WORKS

- 3.04 Effective logging of, and response to, complaints and emergency and other unforeseen problems

Reactive repairs and emergency works should not be seen as diversionary from or secondary to any planned maintenance programme. This may result in insufficient priority and funding being available.

- 3.05 There should be systems and procedures to ensure that any problems reported by occupiers or others are logged on the dwelling records and that appropriate action is taken and recorded.

The person(s) responsible for management of reactive and emergency repairs should have sufficient authority and seniority to make decisions and to call into account those responsible if things go wrong.

Training on file management to ensure effective file management can be crucial and it is 'critical to have first class management information to see through the fog'. In one example, a computer specialist developed the database over 11 months. All machines were inter-linked so that everything, from the time an operative visits to compensation and fees, is recorded. Touch screen hand-held computers were introduced for use on site, enabling the surveyor to download and produce an order on site. This use of hand-held technology minimises ineffective time so that it will be possible to upload information from the Unit office.

COMPLAINTS AND ENQUIRIES

- 3.06 Any system for receiving and logging complaints and enquiries should recognise that occupiers are not building experts and their reports may be vague explanations of the problem.

One example to help the tenant explain the problem or defect complained of is a handbook of repairs issued to every tenant. The officer receiving the report of disrepair has a similar if more detailed handbook. Where it is not possible to identify the underlying problem, for example dampness, then the property will need to be inspected.

- 3.07 Any such handbook (or other documents) should be available in a range of languages.

The record of any complaint or enquiry should be clear and adequate, and the system should be capable of indicating repeat complaints.

- 3.08 Although the system should be primarily geared to ensuring a proper response is made to any complaints and enquiries, dealing effectively with any threatened legal action will depend on the landlord's records. This means they should be comprehensive, and include full details of any complaint or enquiry and the response made.

A sense of role and position within the organisation is important for any member of staff, and this applies particularly to the person responsible for receiving the complaint or enquiry. That person is in the front line and his or her demeanour should reassure the complainant that the matter is being taken seriously and will be dealt with effectively. The importance of the individual and the role should be recognised and reinforced with adequate training in customer relations, record keeping and computer use.

- 3.09 Once notification of disrepair has been received by the landlord then certain legal obligations are triggered (such as those currently imposed by s11 of the Landlord and Tenant Act 1985). This may be the case whether the notification is given through a designated repair office or to another section. It is therefore essential that any person within the authority or association who could receive notification of a problem or disrepair deals with it quickly and effectively. If it is not part of their responsibility, they should ensure it is quickly directed to the appropriate person or department.

- 3.10 Where there are several designated points at which complaints or enquiries can be made there should be a central complaint/enquiry recording system. With computer networks this is a straight-forward proposition, and could be set-up so that whoever receives the complaint or enquiry can enter it into the central data base.

Such a system might also offer repair appointments and, by linking direct to the contractor, order the necessary action. Similarly, where the complaint or enquiry requires specialist advice or assessment, a direct link (such as e-mail) could allow for appointments to be made and confirmed with relevant specialists.

The complaint and enquiry recording system should be capable of responding to the full range of contacts, such as face-to-face reporting, letters, telephone calls and even e-mails or other electronic communication systems. A receipt or acknowledgement should always be given which also provides details of the response to be expected.

An example of an alternative to complaints and repair reporting to the landlord who would then have to order the appropriate works, is a system where complaints are direct to a contractor responsible for remedying problems at the property. In this example, the contractor could spend up to £10,000 per property without reference back to the landlord. The landlord monitors the budget and verifies customer satisfaction through telephone surveys undertaken monthly.

PRE-WORK INSPECTIONS

Where an inspection is necessary, for example to assess the exact nature of the problem and remedial action necessary, this should be carried out as soon as possible. This should be automatic for some complex issues, such as dampness, where the cause and remedial works require expert assessment. Whoever carries out an inspection should be competent have a clear understanding of the landlord's obligations. There should be a report of the inspection which clearly describes the conditions and details the action required (whether this be for work, or for further investigations into the cause(s) of defects identified) and, if necessary, there should be a schedule of works.

- 3.11 The inspector should have sufficient authority to be able to authorise and order the appropriate works.

Where specialists are required, whether in-house or not, these should be called in quickly. Again, this could be simplified by delegating authority to the inspectors to instruct a specialist or expert from an approved list.

Appointments should be made for inspections, and should be kept. If, in an emergency, an appointment has to be postponed or cancelled, then the tenant should be informed as quickly as possible and new arrangements made.

IN-HOUSE OR EXTERNAL CONTRACTORS

- 3.12 It is irrelevant whether works are carried out by in-house labour force or external contractors or a combination. What is important is that the works are carried out satisfactorily. Cost alone should not be the determining factor. Whichever is used, it must be the person ordering the works who determines the timescale and programme for the completion of the works.

Choice and monitoring of contractors or in-house labour-force should involve Best Value review procedures. Whoever is carrying out the works must be motivated and use reasonable care and skill. They should also be aware of the landlord's legal obligations, of any legal framework relevant to the works, and the consequences of failing to meet any deadlines.

One option could be to establish a partnership with a contractor who is responsible for both inspection and remedial works. An example of this is an open-book, set fee approach based on the number of jobs undertaken. Unlike a schedule of rate which may encourage 'an adversarial approach and no-one bothers about the resident', this could 'incentivise' the contractor to make sure the tenant is satisfied. In such an option, all work would be undertaken by the contractor's labour force and only specialist work undertaken by sub-contractors. The onus would be on the partner contractor to remedy problems in a property where the occupier has complained.

TIMESCALES FOR COMPLETION OF WORKS

- 3.13 There should be clear timescales set within which remedial work is to be completed. Where appropriate, they should cover temporary works to remove immediate threats to health or safety, until effective repairs can be carried out.

Timescales within which works will be completed should be published.

- 3.14 Timescales for completion of works should reflect the nature of the problem and should not be determined by the nature or scale of the remedial works. This means they should recognise that, for example, repairing space and water heating systems should be treated more urgently during the colder weather than during the summer. Timescales should also reflect the type of occupants, taking into account the elderly and others who may be more vulnerable. (Examples of timescales, including those given in Secure Tenants of Local Authorities (Rights to Repair) Regulations 1990, are given in Annex B).

It is important to schedule or programme the works in the right order. This will avoid, for example, electrical works involving chasing wiring into walls being carried out after re-plastering works.

CARRYING OUT WORKS

- 3.15 The way works are carried out should take into account that they are being carried out in someone's home. The works should be geared to ensuring the occupiers can, so far as is possible, continue their normal life, allowing for mealtimes, and for attendance at school and work.
- 3.16 Although any works, both external and internal, will cause disruption, there should be procedures and practices to keep this to a minimum. Where works are very disruptive or may affect the health or safety of any occupant, then temporary rehousing should be provided for the duration of the works.

Appointments should be made for access for works to be carried out, and should be kept. If, in an emergency, an appointment has to be postponed or cancelled, then the tenant should be informed as quickly as possible and new arrangements made.

The use of a designated co-ordination officer, used to dealing with people, could resolve issues as they arise and help avoid problems becoming crises.

ENSURING WORKS CARRIED OUT

- 3.17 Whether works are being carried out as part of programmed preventative maintenance or in response to reports from occupiers or others, there should be procedures to ensure the works have been completed satisfactorily. Not only should the works be carried out to the satisfaction of the authority or association, but also to the satisfaction of the occupier (the person whose home it is).
- 3.18 There should be an adequate system of both work in progress and post-work inspection, not merely a reliance on those carrying out the works confirming they have done the work.

CHAPTER 4

Effective and positive response to threats of legal action

- 4.01 Even with an effective and efficient complaint and enquiry procedure, there may be occasions when legal action is threatened. The likelihood and volume of such threats will be determined by four factors⁴:
- unsatisfactory condition of dwelling;
 - motivation of tenant;
 - availability of legal advisers; and
 - tenant awareness of legal remedy.
- 4.02 All four factors must exist before legal action will be threatened or taken.

SYSTEMS AND PROCEDURES

- 4.03 Any threat of legal action demands an appropriate response to reduce the possibility of proceedings starting or continuing. The response should be appropriate to the legal action threatened or possible. This means that the systems and procedures for responding to any threat of legal action should be separate from the normal day-to-day reactive repairs system.

The general approach and attitude should not be defensive, but to engage with the problem.

- 4.04 The basic attitude and approach is important. It should avoid as much as possible the adversarial attitude implicit in legal action. It should be directed to avoiding court action, while allowing for admissions where there have been mistakes which should have been avoided.
- 4.05 Where litigation has started, the following basic approach is suggested:
- Gather all information together quickly to review the history and to assess how the current situation has arisen. The information should include document files, computer records and statements from all persons involved. This stage should assist in gauging what, if any, compensation may be justified.

⁴ These factors were identified and discussed in *The Use of Section 82 of the Environmental Protection Act 1990 against Local Authorities and Housing Associations* (1996) HMSO.

- Instruct a tried and tested surveyor, environmental health officer or other relevant expert (depending on the issues involved) to assess and report on the current condition and comment on the allegations. Where possible, this should be someone who has not been involved with the dwelling previously. Ideally, whoever is instructed should have court experience or at least training in expert evidence and courtroom practice.
- Obtain a costed schedule of works based on the findings of the surveyor or expert. This should be sent to the tenant's solicitor or adviser as soon as possible.
- Implement the works identified as promptly as possible and certainly within any timescales set around any legal action.

The approach needs to be geared to the relevant legal action, taking account of the particular stages and deadlines and the particular obligations or standards. It should follow any pre-action Protocol, such as the current draft Disrepair Protocol for civil cases⁵.

There should be a named person or team responsible for responding to threats of legal action and the system should ensure that any such threats are passed to that person or team however they are received. There should also be deadlines set within which there is a response to all such threats.

There should be an immediate assessment of the property file and records and an inspection of the property. The inspection should be carried out by a person aware of the relevant legal obligations and standards and should identify the conditions and remedial works appropriate for the particular legal action, such as those relevant to Statutory Nuisance allegations and those relevant to claims of breaches of repairing obligations. There should be no delays in instructing an expert to inspect and advise.

Once the relevant works have been identified, they should be carried out within the deadlines appropriate to the particular threatened action. There should be a report of the inspection which clearly describes the conditions and details the action required, and, if necessary, there should be a schedule of works.

- 4.06 Currently (November 2001), for example, for action threatened under s82 of the 1990 Environmental Protection Act, the works should where practical be geared to ensuring that, within 21 days, there can be no allegations of a Statutory Nuisance existing. Whoever is responsible for identifying the works to be done should have authority to order them to be completed before the deadline. (Again, it may be appropriate in some circumstances for temporary works to be carried out before the deadline, and permanent works to be done as soon as possible afterwards to prevent any recurrence of the problem.)

Where a threat of legal action is accompanied by a report from an expert instructed on behalf of the complainant, a joint site visit should be arranged as soon as possible.

It may be appropriate to establish a separate specialist unit, such as a mobile repair team, to respond to threats of legal action. An example of this is a specialist Disrepair Unit set-up by one authority. This has 'a simple policy – to get the work done to good quality and on time'. The Unit has its own environmental health officer and, solicitor. It also has its own mobile repairs workforce which is in communication with the Unit office.

⁵ Prepared by the Law Society and issued January 2001 for consultation. (While this Protocol only relates to civil proceedings, the principles set good practice for any legal action).

LEGAL SUPPORT

- 4.07 Up-to-date legal support is necessary to ensure the response to any threat of legal action is appropriate. Where justified by the volume of threats of legal action, there should be a solicitor within the unit or at least solely responsible.

It is important that any solicitor responsible for responding to threats of legal action has accurate knowledge and experience of the subject area and is 'organised' to meet deadlines (as those in private practice have to be under the Franchising System).

CHAPTER 5

Good communications

- 5.01 Good communication will help reduce problems arising, avoid delays and encourage good relations. This includes good communication between departments, between different disciplines (eg, between lawyers, environmental health officers and the building trades), and between the landlord, its agents or contractors and the tenant.

BETWEEN DEPARTMENTS

- 5.02 Where there is more than one department involved in repairs and threats of legal action, good communication will help ensure the appropriate action is taken within the appropriate timescale. Each department needs to be aware of their own and the other department's role and responsibilities and, as appropriate, be able to issue and respond to instructions. For example, it should be recognised that it is the person ordering the works who determines the programme for the completion of the works, although the lawyers who stipulate the timescale depending on the type of legal action.

There should be good liaison between housing and legal departments, and clear communication between all those involved in the repairs process, for example by e-mail links.

BETWEEN DISCIPLINES

- 5.03 Communication within disciplines is made easier as all those involved use the same language; words have the same meaning. Between disciplines such as lawyers and the building trades however, communication can become more difficult. There is a need to break down discipline barriers to improve communication.

Regular staff meetings of all those involved helps each understand the responsibilities, priorities and contribution of everyone involved.

BETWEEN LANDLORD AND TENANT

- 5.04 There should be a positive attitude between the landlord and tenants. Responding to tenants concerns and keeping tenants informed helps avoid feelings of dissatisfaction.

Housing departments must see themselves as service providers.

As well as tenancy agreements, tenants should be provided with handbooks which explain the responsibilities of the landlord and of the tenants, and give an explanation of the repairs procedures. This should be in Clear English and, where necessary, in other relevant languages.

- 5.05 Tenants should be kept informed through regular meetings, newsletters and through tenants' organisations.

It is important to talk to tenants, through regular tenant or tenant association and landlord meetings, and find out their concerns. And this should include all those involved in the repairs systems, including contractors and solicitors.

Where a tenant has made a complaint or enquiry, full information explaining the response and timescale should be provided.

- 5.06 There should be monitoring of tenant satisfaction with the service generally and on the response to individual complaints or enquiries.

This could be by telephone monitoring, or by forms or pre-paid postcards. It could be all or a proportion of tenants. Monitoring could also be through tenants' organisations.

CHAPTER 6

Regular reviews of systems and procedures

- 6.01 While systems and procedures appear to operate satisfactorily there is little incentive to review them. However, regular reviews will help ensure they continue to operate properly and will identify issues before they become problems.
- 6.02 Landlords' responsibilities and local authorities' duties are formulated by law and subject to guidance, and legal actions may result in case law which clarifies issues. It is important for landlords to keep up-to-date on any changes and to review their systems and procedures in the light of those changes. It is not only the law relating to housing conditions that can change, but also changes to rules on the funding of litigation⁶ and the operation of legal franchises can influence both the likelihood and type of legal action and also the availability of legal advice for tenants.
- 6.03 Where there are threats of legal action, these can be taken as indicators of problems in the systems and procedures. These should prompt immediate reviews to try to identify where improvements can be made to avoid the problems and so reduce the likelihood of future threats.

⁶ Previously Legal Aid.

CHAPTER 7

Administration complaints system

ESTABLISH, MAINTAIN AND PUBLISH A SYSTEM FOR DEALING WITH COMPLAINTS ABOUT ADMINISTRATION ETC (NOT ABOUT CONDITION), PROVIDE A SAFETY NET SUCH AS AN ARBITRATION PROCEDURE

- 7.01 Adopting a clear and well sign-posted complaint procedure may help reduce the need for legal action to be threatened by dissatisfied tenants⁷. It may also highlight problems within the systems and procedures which will inform reviews.

For example, establishing an arbitration scheme or providing a published and clearly signposted complaint procedure.

- 7.02 To provide a viable alternative to legal action and not a sop, any such scheme or procedure should be set-up in such a way that it can be seen to be independent and have enforceable sanctions. It should also be able to order works and award compensation.

In one example the local authority has a Housing Appeals Panel (sub-committee) to which tenants can appeal against the decision to go to Court for an order seeking possession. This is a 'last chance' but the panel requires information as to any disrepair and conditions before making a decision on whether to seek possession. Therefore, an inspection of the property is carried out to ensure that the property is not in disrepair and, where it is, that any repairs are undertaken before the appeal is considered. There is also an arrears management system in operation that would normally pick up disrepair issues before any action for possession was threatened. This also helps avoid any counterclaims to possession action.

⁷ For advice on a general complaints procedure, see *Guidance on Good Practice 1: Devising a Complaints System* (1992) Commission for Local Administration in England.

ANNEX A

Outline of the landlord's principal legal responsibilities to repair

INTRODUCTION

- A.01 Statute and case law can change significantly in a relatively short period of time. Whether legal action is threatened or taken by dissatisfied tenants can also be affected by changes to the legal funding regimes, and to changes to the legislation relating to solicitors' rights to practice. *Therefore, this outline can only be taken as correct as at November 2001.*

LANDLORDS' OBLIGATIONS

- A.02 Broadly, there are currently three different sets of obligations on landlords to repair and maintain properties which they let to tenants. These are:

(A) Repairing obligations in the tenancy agreement

The terms of the tenancy agreement may impose specific liabilities on the landlord to repair the property. These are generally known as 'express' obligations.

Even without any express obligations in the tenancy agreement, the Landlord and Tenant Act 1985 gives landlords of all tenancies which are weekly or monthly or for a fixed period of time of less than seven years an absolute obligation to carry out basic repairs. It makes it an implied term of every tenancy that the landlord will 'keep in repair the structure and exterior' of the property and 'keep in repair and proper working order the installations' for the supply of water, gas and electricity, and for sanitation and space heating and heating water.

It is important to stress that a landlord cannot opt out of the obligations imposed by the Landlord and Tenant Act 1985. Where there is a conflict between what is expressed in the tenancy agreement and the statutory implied obligation, it is the statutory obligation which is binding.

These obligations apply whether or not the rent is in arrears.

(B) Legal duties of care

The law also places several legal duties on landlords. The most relevant one in the case of repairs is the duty requiring landlords to take reasonable care to ensure that anyone who might reasonably be expected to be affected by defects in the state of the premises is reasonably safe from injury or damage to their property caused by a relevant defect of which the landlord knew or ought to have known. This duty is set out in section 4 of the Defective Premises Act 1972 and it is owed to the tenant, the tenant's family and to visitors.

Section 1 of the same Act imposes a duty on all those who carry out work in connection with the provision of a dwelling to do the work in a professional or workmanlike manner and to use proper materials, so as to ensure that the dwelling is fit for human habitation when completed. This will apply to landlords who build or convert properties for letting.

(C) Statutory nuisance

Since the nineteenth century, public health law has also provided protection for tenants against some of the effects of poor housing conditions. The Environmental Protection Act 1990 makes provision for the control of premises which are considered to be prejudicial to health or a nuisance. These provisions apply to council and housing association tenancies as well as private tenancies.

EXTENT OF THE OBLIGATIONS

- A.03 These notes explain in more detail what the obligations outlined in A, B and C above mean and the type of legal proceedings which may be taken against landlords by tenants who consider that their landlord is not providing a good repairs service to them.

THE REPAIRING OBLIGATIONS IMPLIED BY s11 OF THE LANDLORD AND TENANT ACT 1985

- A.04 A landlord has to keep in repair the structure and exterior of the dwelling house including drains, gutters and external pipes, and to keep in repair and proper working order the installations for the supply of water, gas and electricity and for sanitation. A landlord must also keep in repair and proper working order the installations for space and water heating.

‘keep in repair’ – this phrase amounts to a continuing obligation to keep up the standard of repair throughout the tenancy and to put the premises into repair if they were not in repair at the start of the tenancy. It includes an obligation to make good any damaged decorations or redecorate after completing any repair work. Repairing any defects can mean that sometimes the landlord has to completely renew or replace part of the structure if merely repairing the defect is not going to provide a practicable or lasting remedy for the disrepair.

‘structure and exterior’ of the property has been taken to include the walls, windows, roof, the access steps and path to the property and in some cases the internal wall plaster. External render and joinery will also be treated as part of the exterior. Gutters, drains and external pipes are expressly included.

If the dwelling is a flat, then the term ‘structure and exterior’ will include the outside walls of the flat and the outside of the inner party wall of the flat. For tenancies of flats which started after 15th January 1989, the words ‘structure and exterior’ have been extended to include all the remaining parts of the building in which the flat is situated provided that

- a. it remains in the landlord’s control; and
- b. the disrepair in this part of the building is affecting the tenant’s use of his/her flat.

‘installations’ – a landlord is liable to keep in repair and in proper working order the installations for supply of water, gas, and electricity and installations for sanitation, space heating and heating water. The repairing obligation covers the installations which are actually in the premises. For all tenancies which began after 15th January 1989, a landlord is obliged to keep in repair and proper working order any installation which directly or indirectly serves the premises if it forms part of the building which the landlord owns or has under his/her control.

WHEN A LANDLORD BECOMES LEGALLY RESPONSIBLE FOR FAILING TO CARRY OUT THE REPAIRS REQUIRED BY s11

- A.05 If the defect is inside the premises, a landlord only become liable for failure to repair it if:
- a. He or she has notice of it – this means having sufficient information about the problem to indicate to a reasonable landlord that works of repair are needed; and
 - b. a reasonable opportunity to do the works required has past.
- A.06 This requirement of prior notice does not apply to defects outside the premises which are let and which remain in the control or ownership of the landlord. As soon as a repair problem develops here, the landlord will be liable even if s/he has not been notified.

STANDARD OF REPAIR REQUIRED BY THE LANDLORD AND TENANT ACT 1985

- A.07 The Act says that in deciding the standard of repair needed, regard has to be had to the character, age and prospective life of the premises. But this does not justify leaving a tenant in a situation of material discomfort even when the prospective life of the dwelling maybe short.

EXCEPTIONS TO THIS DUTY TO REPAIR

- A.08 The responsibility to repair does not apply to any items which the tenant is entitled to remove at the end of the tenancy. Nor is a landlord expected to repair defects caused by a tenant's default. Even if a tenant owes rent or has broken an obligation of the tenancy agreement, the landlord has a legal duty to repair.

ACTION AVAILABLE TO A TENANT WHO CONSIDERS THAT HIS/HER LANDLORD HAS NOT HONoured ITS REPAIRING OBLIGATIONS UNDER THE LANDLORD AND TENANT ACT 1985

- A.09 A tenant may consider using the landlord's complaints procedure or complaining directly to the Ombudsman in some cases. An alternative may be to take proceedings in the local County Court for a court order requiring the landlord to carry out the necessary repairs and also to pay financial compensation (damages) for the distress and inconvenience and losses suffered by the tenant and his/her family because of the lack of repairs to their home. The procedures used in actions started by tenants against their landlords for breaking the terms of the tenancy relating to repairs or the terms included in their tenancy agreement by s11 of the Landlord and Tenant Act 1985 are explained in the section below headed County Court Procedure. In a claim for breach of repairing obligations, the County Court has the power to:
- a. award the tenant damages (see A.10 below on how this is quantified);
 - b. make an order for specific performance requiring the landlord to carry out specified repairs within a specified timescale;

- c. make a declaration as to the rights of the parties and the estimated costs of the repairs; and
- d. in urgent cases where there is serious disrepair, make an interim injunction before the full trial requiring the landlord to complete essential limited repairs.

HOW THE COUNTY COURT QUANTIFIES DAMAGES

A.10 If a tenant succeeds in proving that there has been a breach of the landlord's repairing obligation, he/she will be entitled to compensation for the damage suffered as a result of the landlord's failure to repair. The main purpose of damages in a disrepair claim is to, as far as possible, put the tenant in the position s/he would have been in if there had been no breach of repairing obligation.

A tenant can claim:

- a. **General damages** – these are assessed as the loss of value of the tenancy to the tenant, ie, the loss of comfort and convenience resulting from living in a property in disrepair. These can be calculated either by a notional deduction in rent for each week of disrepair or by a global award for discomfort and inconvenience following guidelines set by cases that have already come before the court.
- b. **Special damages** – this is compensation for specific items lost or damaged because of disrepair, eg, carpets or curtains ruined by dampness. It also includes other losses capable of specific calculation in monetary terms, like cleaning costs or extra heating costs.
- c. **Interest** – to be paid on the compensation, the general and special damages, awarded.

THE EXTRA OBLIGATIONS IMPOSED BY THE DEFECTIVE PREMISES ACT 1972

A.11 This Act states that where premises are let under a tenancy and either:

- a. the landlord has an obligation to repair; or
- b. has a right (express or implied) to enter the premises to effect repairs then 'the landlord owes to all persons who might reasonably be expected to be affected by the defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or damage to their property caused by a relevant defect'.

'**a relevant defect**' is one which the landlord is obliged to repair by virtue of the tenancy agreement or the terms implied by s11 of the Landlord and Tenant Act 1985. The scope of this duty is wider than the obligation imposed by s11 of the 1985 Act as a landlord can be liable for personal injury and property damage caused by disrepair even though it did not have notice of it or know of it. The duty applies where the landlord knows or 'ought in all the circumstances to have known' of the defect. Courts expect landlords to take positive steps to inspect their properties to check for reasonably foreseeable latent defects. In effect, this duty requires landlords to have some programme for inspecting their properties.

ACTION AVAILABLE TO A TENANT WHO BELIEVES THAT THE LANDLORD IS IN BREACH OF THE DUTY UNDER s4 OF THE DEFECTIVE PREMISES ACT

- A.12 A tenant can use the landlord's complaints procedure or go to the Ombudsman. Or, may choose to take legal action in the local County Court to apply for a court order. The County Court order can require that the necessary repairs be effected and/or for compensation for any injury to the users of the premises or the damage to property caused by the defects remaining unrepaired.

STATUTORY NUISANCE – PART III, ENVIRONMENTAL PROTECTION ACT 1990

- A.13 Part III of the Environmental Protection Act 1990 makes provision for the control and elimination of 'statutory nuisances'. Some of this legislation can be used by tenants to obtain improvements and/or repairs to their housing conditions, although it is the local authority's environmental health department which has a general legal duty to control statutory nuisances throughout its district. A tenant who wishes to use the statutory nuisance provisions has to give written notice to the landlord of the intention to take action. Proceedings brought by a tenant under the statutory nuisance provisions against a landlord are criminal proceedings and the case is tried in a Magistrates Court.

WHAT IS A STATUTORY NUISANCE?

- A.14 Conditions which can amount to a statutory nuisance are defined in s79 of the 1990 Act. The most relevant to housing are:

'(1) any premises in such a state as to be prejudicial to health or a nuisance';

'(2) any accumulation or deposit which is prejudicial to health or a nuisance', and

'(3) noise emitted from premises so as to be prejudicial to health or a nuisance'.

'premises' – this term has a very wide meaning. It can include all land and vessels. It covers private and public sector housing. In the case of a block of flats, it may be an individual flat or flats but not the whole block unless the condition complained of involves the entire block or the tenants are complaining about the communal parts of the block. A travellers' site can also be regarded as premises.

'prejudicial to health' – a statutory nuisance will be present where a dwelling is in such a state as to be 'injurious or likely to cause injury, to health'. So, it includes circumstances where health has been injured by the conditions, and where health is threatened and could be injured. Courts have decided that there will be prejudice to health, if the condition of the premises is such as could cause a well person to become ill or a sick person to deteriorate. Some examples of housing which have been found 'prejudicial to health' are dwellings affected by dampness, condensation, mould growth, infestations, and disrepair.

It is necessary to show a risk to health, not simply a risk of injury, for premises to be prejudicial to health. For example, a house with an unusually steep staircase where there is a risk of an accidental fall will not be prejudicial to health. In addition there has to be some feature in the premises which is in itself prejudicial. An unsatisfactory arrangement of rooms which are not, in themselves, insanitary cannot be prejudicial to health, even though the proximity of the toilet and kitchen presents a risk of cross-infection.

The test of whether premises are prejudicial to health is an objective one and is not based on the particular characteristics of the occupants. There is no definition in the Act of the term 'health'. It is interpreted broadly to include both physical and mental health. Poor quality housing in itself places stress on its occupants but the visual impact of an eyesore or damaged decorations will not be 'prejudicial to health'.

The professional with expertise on the correlation between health and housing is the environmental health officer. In deciding whether the premises are prejudicial to the occupants' health, courts will expect to have direct evidence from an environmental health officer.

'or a nuisance' – for there to be a statutory nuisance, the conditions may be either prejudicial to health or a nuisance or both. The Act does not define nuisance but it has been decided by the courts that a nuisance must be either:

- a. A public nuisance at common law – this occurs where an act or omission affects adversely the comfort or quality of life of members of the public. A housing example might be a badly leaking pipe which pours water directly onto the pavement.
- b. A private nuisance at common law – this is a substantial interference by an owner or occupier of property with the use and enjoyment of a neighbouring property for a substantial period of time. An example of this could be effluent leaking from a waste pipe in one flat into another in the same block.

RESPONSIBILITY FOR THE STATUTORY NUISANCE

- A.15 Action can only be taken against the person who is deemed by the Act to be responsible for the nuisance. In the case of structural defects, this will be the owner of the premises. In other cases, the responsible person is defined as 'the person to whose act, default or sufferance the nuisance is attributable'.

STATUTORY NUISANCE ACTIONS BY TENANTS

- A.16 Private sector tenants and housing association tenants are likely to ask the local authority's environmental health officers to take action to deal with conditions which make their premises a statutory nuisance. As these officers cannot take action against their own council, this means that council tenants cannot rely on them to provide enforcement.
- A.17 However, s82 of the Act allows **'any person aggrieved by the existence of a statutory nuisance'** to start proceedings in the magistrates court. This gives all tenants the right to take action themselves against the person responsible for the nuisance. It also allows occupiers and visitors to take action where they are affected by the statutory nuisance.
- A.18 If, on hearing the case, the magistrates are satisfied that a statutory nuisance exists and that the person accused is responsible then:
- a. they will make an order requiring that person to eradicate the statutory nuisance and carry out any works necessary to control it (a Nuisance Order);

- b. they will also order the person found responsible to pay costs to the person bringing the action if it results in a nuisance order being made;
- c. they may also award limited compensation; and
- d. as the proceedings are criminal, they may impose a fine.

County court procedure

THE PRELIMINARY STAGES

- A.19 Normally, before a tenant starts a court action against a landlord, a letter of claim will be written by the tenant's legal adviser giving notice of:
- a. the repairs required;
 - b. details of previous notice given;
 - c. a history of the repair problems at the property;
 - d. details of the effect the disrepair has had on the tenant and family;
 - e. details of any particular items damaged and costs;
 - f. inviting the landlord to deal with the outstanding repairs within a set timetable and/or to pay compensation and legal costs incurred to date;
 - g. inviting the landlord to agree to jointly instruct a suitable expert to inspect the premises and prepare a report of the defects.
- A.20 This letter of claim should allow a landlord time to investigate the claim and consider their position.
- A.21 The process by which a claim is brought to trial in the County Court is regulated by a code of rules and practice directions called 'The Civil Procedure Rules' (CPR). For some types of case, eg, for legal claims for damages for personal injury, the rules lay down a protocol which must be followed before court proceedings can be started. At present, there is no adopted protocol for disrepair claims⁸, but the guidance in the CPR states that 'the court will expect the parties... to act reasonably in exchanging information and documents relevant to the claim and in generally trying to avoid the necessity to start proceedings'. The emphasis is upon trying to settle disputes about repair without the need for any court action.
- A.22 A draft pre-action protocol specifically for housing disrepair cases is being considered and a final version of the protocol, if adopted, will be incorporated into the CPR. If a tenant or landlord fails to follow the protocol, without a good reason, that party is likely to be penalised by the court in terms of the costs they will be expected to pay. It will set out in detail the steps which each side has to follow before a court action can be launched –

⁸ This is as at April 2001.

including giving the other party any documents relevant to the dispute eg, repair receipts, letters of complaint, repairs printouts, exchanging any reports prepared on the state of repair of the property, and agreeing to appoint one joint expert to inspect the property.

- A.23 The tenant may put forward an offer to settle their claim before starting any court action. There can be costs penalties for the landlord if it ignores this offer and at a later trial the tenant equals or beats this offer to settle.

STARTING COUNTY COURT PROCEEDINGS

- A.24 If a tenant's claim is not settled by negotiation then court proceedings may be started by the tenant in the County Court. While it is the County Court which is the usual forum for disrepair cases, very occasionally the High Court may be used, eg, for claims with a high financial value or of particular complexity or significance.
- A.25 The tenant bringing the claim has to prove his or her case to the court to be successful. The standard of proof is on a balance of probabilities. Costs are awarded at the court's discretion but the usual rule followed is that the unsuccessful party will be obliged to pay for the winning party's costs.
- A.26 The person who brings a claim is known as the claimant and the person claimed against is called the defendant.
- A.27 The tenant's claim will be set out in a written claim form and particulars of claim which should explain:
- a. what the past and current repair problems are;
 - b. why they are the responsibility of the landlord;
 - c. what notice has been given to the landlord about the problem;
 - d. how the disrepair has affected the tenant and other occupiers;
 - e. what the tenant is asking the court to do – to make an order to rectify the repairs and/or to award compensation, interest on compensation and legal costs to the tenant;
 - f. how much the tenant thinks the claim is worth.
- A.28 In the County Court claims are eventually allocated to one of three tracks depending broadly on the value of the claim and the complexity of the law and fact to be argued in each case. Allocation to a particular track has cost and time implications for the parties. The three tracks are:
- i. **The small claims track**
Claims in this track are dealt with by arbitration by a district judge. The court has more limited power to award costs and the procedure is less formal. The procedure for this track is supposed to be fairly quick and straightforward, designed to make it easy for a person to run their own case without the need for a lawyer to represent them. It is

intended for claims valued at not more than £5,000. However, where a residential tenant's claim includes a claim for an order requiring the landlord to carry out repair work to the property, it will not usually be allocated to the small claims track if either

- a. the costs of the works required are estimated to be more than £1,000, or
 - b. the financial value of the rest of the claim is more than £1,000.
- ii. **The fast track**
This is the usual track for claims over £5,000 where the trial of the issues will not take longer than a day and there is limited expert evidence. In the fast track, there are limits on the trial costs which the successful party can claim from their opponent. Trials are supposed to be fixed within a fairly tight time limit.
- iii. **The multi-track**
This is used for disrepair claims of over £15,000 or if the trial is likely to last more than one day. This is likely to be the most costly track.

RESPONDING TO THE TENANT'S CLAIM

- A.29 If a landlord is contesting a tenant's claim, then it has to send to the court and to the tenant's legal representative a written denial explaining what is disputed and why. This document is called the Defence and ends with a statement of truth which will normally be signed by the senior officer responsible for the property. He or she has to sign the Defence confirming that s/he 'believes that the facts stated in the Defence are true'.
- A.30 Strict time limits will be imposed by the court for completing the Defence.
- A.31 It may be that the landlord agrees with some of the claims made by the tenant. In this case, it is important to put forward an offer to settle the whole or part of the tenant's claim. Provided the offer is set out in the particular format required by the CPR, if it is not accepted by the tenant within 21 days of the making of the offer, and the tenant fails to obtain a better deal at trial from the court, the landlord will be protected from a costs order from the date of the offer. In any event, if the landlord accepts that there are repairs which need attention, then it is sensible to effect these as soon as possible.

DISCLOSURE OF DOCUMENTS

- A.32 In most cases, the County Court will require the parties to give each other typed lists of all the documents which are or have been in their possession and which:
- a. they intend to rely on to prove their case; or
 - b. could adversely affect their case; or
 - c. could adversely affect the other party's case; or
 - d. could support the other party's case.

EVIDENCE

Witnesses as to fact

- A.33 At a trial in the County Court, the judge will consider the evidence of witnesses as to the facts in the case. A written witness statement ending with a statement of truth signed by the witness has to be prepared beforehand. The parties are required to exchange witness statements in advance of the trial. Normally, a witness cannot amplify his/her witness statement without the permission of the court, so it is important that the statement deals with all the points which that particular witness wishes to make. The witness has to be available for the trial and may be required to give evidence on oath and to be cross-examined by the other side's legal representative.

Expert witnesses

- A.34 In cases involving disrepair, it is likely that the parties will wish to use experts to comment on the state of repair of the premises, professionals such as surveyors or environmental health officers who can provide opinions on:
- a. whether the property is in disrepair;
 - b. what the causes of disrepair are; and
 - c. how best to effect the repairs.
- A.35 The CPR restrict the use of expert evidence by stating that expert evidence should only be used where it is reasonably required to resolve the proceedings. No party can call an expert to give oral evidence or put in evidence a written expert's report, without the court's permission. In addition, there is a general requirement that unless the court specifies otherwise, expert evidence at trial will be given by written report only.
- A.36 Court rules encourage the parties to agree to instruct a single joint expert to report on the property, and the Court has power to direct the parties to use the same expert and even has power to appoint an expert, if the parties cannot agree on a single joint expert. Judges, however, may be prepared to be flexible and if the parties really cannot agree to any one joint expert, may allow each party to have their own expert. In this case, the Court may require the claimant and defendant to exchange written expert reports and then arrange for the experts to meet after the exchange and try to identify the issues on which they agree and the issues on which they disagree and the reasons for their disagreement.

CHOOSING THE EXPERT AND THE CONTENT OF THEIR REPORT

- A.37 The CPR states that the overriding duty of the expert is to help the Court on matters within their expertise. Normally, both parties would be expected to produce any letter of instruction which they send to the expert they use, if it is not one jointly instructed. In a recent case, the Court of Appeal held that, provided a person is suitably qualified to be an expert, the fact that they are employed by one party does not disqualify them from acting as an expert, but that expert has to have full knowledge of the requirements of the court and the need for objectivity. It might, however, affect the weight attached to their evidence, and certainly they could not be appointed as a single joint expert for both parties.

- A.38 The expert report has to contain a declaration that the expert has understood his/her duty to the Court and complied with it. It has to include a statement of truth signed by the expert. It should give an estimate for the overall cost of the repair work and an analysis of which defects fall within the scope of the landlord's repairing obligations, ie, s11 of Landlord and Tenant Act 1985 and s 4 of the Defective Premises Act 1972.

THE TRIAL

- A.39 Hearings in the County Court are usually in public and are conducted before a single judge. The normal order for the proceedings will be:
- a. the claimant's opening speech which sets out briefly the law and facts in summary form of the claimant's case;
 - b. the evidence for the claimant;
 - c. the defendant's opening speech;
 - d. the defendant's evidence;
 - e. the defendant's closing speech; and
 - e. the claimant's closing speech.
- A.40 Documentary evidence will usually be provided in agreed, identical bundles suitably indexed. If there are documents about which there is dispute, then it may be that a witness will have to be called to verify the contents or identify them.
- A.41 Usually a witness's written statement is accepted as their evidence unless the judge gives permission for them to amplify their statement or to give oral evidence about what has occurred since their statement was made. The witness will merely be asked to identify their statement and testify on oath that it is true. Then, the other party will have the opportunity to cross-examine the witness.
- A.42 After listening to the evidence and reading all the documents the judge makes a decision about the claim – gives judgment. Sometimes, if the facts or law are complex, the judgment will be reserved, the judge not giving a decision on the day of the trial but at a later date.

COSTS

- A.43 The general rule is that the unsuccessful party will be ordered to pay the legal costs incurred by the successful party but the court has discretion and must consider all the circumstances including how the parties have behaved in conducting their case; whether a party has succeeded in part of their case even if not wholly successful; and whether any offers to settle have been made earlier.
- A.44 It is important for landlords to appreciate that if a tenant is receiving public funding from the Legal Services Commission, then it is unlikely that the court will allow any order for costs to be enforced by the landlord.

APPEALS

- A.45 Appeals against an adverse decision of the trial judge are now only allowed if the trial judge gives permission for the appeal or if the appellant court gives permission. Appeals can only be made on a point of law. If the case has been argued before a District judge (the most junior judge) then appeal will be to a more senior judge in the County Court, a Circuit Judge. If a Circuit Judge has tried the case, then an appeal against the judgment has to be made to a High Court Judge.

ENFORCEMENT

- A.46 If a party is ordered to carry out work by the court and fails to do so, this is contempt of court. A party in contempt of court can be fined or committed to prison as punishment. Alternatively the court can select and direct a building firm to carry out the work ordered at the landlord's expense.

NOTE – Taking action in the county court for failure to meet repairing obligations does not preclude action being taken in the magistrates' court under the Environmental Protection Act. The actions are not mutually exclusive.

Procedure in the Magistrates' Court

THE PRELIMINARY STAGES

- A.47 Before the tenant can start court proceedings, a minimum of 21 days written notice has to be given to the landlord. The notice:
- a. must give the address of the premises alleged to be a statutory nuisance;
 - b. must provide reasonable details of the allegations;
 - c. does not have to set out the work required to abate the statutory nuisance;
 - d. must include a warning that if the problem is not dealt with by a specified date, legal action will be started (this date has to be at least 21 days from the date of the letter).
- A.48 It is likely that the tenant will in any event have complained to his or her landlord before a formal notice is sent. In most cases, tenants will have sought advice and arranged for an independent environmental health consultant to inspect their home and prepare a written report confirming the existence of a statutory nuisance. A copy of this will be sent to the landlord. This will give the landlord additional warning of the problem.

STARTING PROCEEDINGS IN THE MAGISTRATES' COURT

- A.49 If on the date specified in the letter, the statutory notice still exists, then the tenant can apply for a summons.
- A.50 This is done by providing a magistrate or a court clerk with basic information about the alleged statutory nuisance including:
- a. details of the person alleged to be responsible for the nuisance;
 - b. the nature of the alleged nuisance; and
 - c. the relevant sections of the 1990 Act which apply to his/her case.
- A.51 If the magistrate or clerk is satisfied that there is some substance to the allegations, then the court will send a summons to the landlord who will be the defendant in the proceedings. The summons will give the date and time when the magistrates will consider the case.

THE FIRST HEARING

- A.52 Proceedings brought under s82 of the 1990 Act are criminal proceedings and so at the first hearing the defendant will be asked whether s/he pleads guilty or not guilty. A plea of guilty or not guilty has to be taken at the first date before the magistrates, and they do not have the power just to put off the case to another date to allow the defendant time to rectify the nuisance.
- A.53 Usually if the defendant pleads not guilty, the case will be adjourned to another date for a full trial when the magistrates will consider all the evidence.
- A.54 Cases are usually tried before a bench of three lay magistrates or a single District Judge (previously known as a stipendiary magistrate). The standard of proof required will be the criminal standard – the tenant has to show beyond reasonable doubt that the defendant caused the statutory nuisance and that the premises are a statutory nuisance at the time of the hearing or at least were at the time the summons was issued.
- A.55 Proving the case has to be done by calling witnesses to give evidence as to the state of the premises and as to the cause of the statutory nuisance. If the tenant can show that the statutory nuisance arises because of a structural defect in the premises that means that the landlord as owner of the premises will automatically be liable as the owner.

EVIDENCE

- A.56 The evidence in a magistrates court will be primarily oral evidence given under oath by witnesses as to facts of the case or expert witnesses such as environmental health officers who are held to be the experts in relation to the risk which the condition of the premises pose to the health of the occupants. Sometimes other experts such as doctors will also be present to give evidence. An expert witness is someone with experience or expertise in the field. They are entitled to express an opinion about the facts and to draw inferences from the facts attested to.

- A.57 If evidence is agreed by both sides, then a witness does not have to attend court and their witness statement can be read to the court, provided it has been written in a prescribed form and sent in advance to the other party.
- A.58 After a witness has given his or her evidence, then the other party is given an opportunity to cross examine that witness.
- A.59 Bundles of documents and plans and photographs can be agreed beforehand and placed in evidence. If not agreed, each item will have to be identified or its contents verified by a witness giving oral evidence.

THE HEARING

- A.60 At the main hearing, the tenant, as the prosecutor, has to put their case first. The order of the hearing is:
- a. the opening speech by the prosecution, explaining the law and outlining the aggrieved person's case and the evidence they are going to call;
 - b. the witnesses for the prosecution are called and give evidence and are cross examined;
 - c. the defendant then presents its case and can opt either for an opening speech or, more usually, for a closing speech after the evidence;
 - d. the witnesses for the prosecution are called and give evidence and are cross examined;
 - e. the defendant's closing speech (if they did not opt for an opening speech);
 - f. the prosecution can then reply to any legal arguments made by the defendant; and
 - g. the magistrates leave the court to decide whether on the evidence presented by both sides and the legal arguments they find the case proved.

THE POWERS OF THE MAGISTRATES' COURT

- A.61 The magistrates are required to make various findings in every case including:
- a. the actual condition of the premises;
 - i. at the date when the tenant informed the magistrate/clerk about the alleged statutory nuisance to obtain the summons ('the date of the tenant's laying the information'); and
 - ii. at the date of the hearing.
 - b. whether the condition was a statutory nuisance at the date of the information;
 - c. whether the statutory nuisance still exists;

- d. whether it is by reason of prejudice to health or nuisance or both; and
- e. who is responsible for the statutory nuisance?

- A.62 If they find no statutory nuisance at all, the defendant will be pronounced not guilty and the case dismissed. The defendant then can apply for their costs.
- A.63 If the magistrates find that there was a statutory nuisance at the time of the information but that remedial works had dealt with the problem before the hearing, then they must make an order for the aggrieved person's costs to be paid by the defendant.
- A.64 If they find that the premises remain a statutory nuisance, or that the statutory nuisance, although abated, may recur, then they must make a nuisance order and will order the defendant to pay the aggrieved person's costs. They may also order the defendant to pay compensation and they have the power to fine the defendant.

NUISANCE ORDERS

- A.65 This is an order requiring the person responsible for the statutory nuisance to carry out, within a set time limit, the work considered necessary by the court to abate the statutory nuisance and/or to prevent it recurring. The magistrates have to be specific about the works. The order can require works which go beyond the terms of any of the other repairing obligations of the landlord and can include improvements such as additional ventilation, heating or insulation.

COMPENSATION

- A.66 To obtain compensation the tenant will have to provide some evidence of the actual losses suffered. Compensation is for damage suffered to property and for ill health caused by the nuisance and is currently to a maximum of £2,000.

COSTS

- A.67 Where the court is satisfied that the statutory nuisance was present at the date of the information then it has to order the defendant to pay the costs of the prosecution, even when the defendant has agreed to carry out the work but has not had time to do so before the hearing. The costs awarded have to be sufficient to compensate the prosecuting party for the expenses properly incurred in bringing the proceedings. They can include expert's fees, legal costs and loss of earnings. The magistrates make an assessment of the costs to be paid on the day of the hearing from the information provided by the tenant of the costs incurred.
- A.68 There is no public funding for a tenant to argue the case for a nuisance order in the magistrates court, although free legal help is available for preparatory investigations and advice for low income tenants.
- A.69 It is now lawful for the tenant's legal representative to agree to represent the tenant under a conditional fee agreement.

PENALTIES

- A.70 If the court convicts the landlord, it can impose a fine, currently up to a maximum of £5,000.

APPEALS

- A.71 There are two different routes to appeal a magistrates' court decision in a statutory nuisance case. Either party can appeal to the Crown Court, where the case will be reheard before a judge. In addition, both parties can appeal on a point of law to the High Court.

ENFORCEMENT

- A.72 If the defendant fails to comply with an order of the magistrates' court without a reasonable excuse then s/he commits a further offence. The tenant can bring a prosecution for non-compliance. The penalty for failure to comply with a nuisance order is currently a fine of up to £5,000, and a further daily fine can be imposed for each subsequent day of non compliance.

NOTE – Taking action in the magistrates' court under the Environmental Protection Act does not preclude action being taken in the county court for failure to meet repairing obligations. The actions are not mutually exclusive.

ANNEX B

Examples of timescales for remedial works

TIMESCALE FOR REMEDIAL WORKS

- B.01 Many local authorities publish timescales within which specified repairs will be completed. These are often contained in tenants' handbooks. Sometimes, however, the timescales given are influenced too much by administrative and practical issues at the expense of the potential effect the disrepair may have on the occupants' health and safety.
- B.02 It is important to achieve the correct balance in setting timescales. The examples below are not meant to be definitive, but are an indication of the sort of timescales which have been adopted in some cases.

Table 1: Example timescales for completion of repairs

Defect	Timescale
Central Heating not working (between 31st October and 1st May)	1 day
Central Heating not working (between 30th April and 1st November)	3 days
Making front or back door secure	1 hour
Blocked drains	4 hours
No electricity	4 hours
Rotten timber flooring	3 days
Quarry tiles to floors	25 days
Clearing blocked guttering	25 days
Burst pipe inside home	4 hours
Slipped roof tiles which are dangerous	4 hours
Leaking roof	7 days <i>(but will be made safe as soon as possible)</i>
Continuous overflow	1 day
Burst tank	4 hours
Replacing sink, wash basin or bath	25 days

RIGHT TO REPAIR REGULATIONS

- B.03 The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994⁹ (the Right to Repair Regs) set down a procedure enabling secure tenants to ensure certain repairs are carried out and entitling them to compensation where the works are not done with specified times.
- B.04 The procedure to be followed includes a set timetable for each stage. The first target deadline for completion of the works is three days from the date of the receipt of a complaint from a tenant plus the prescribed period given in the schedule (see Table 2 below). If that deadline is not met, then the local authority is required to instruct a second contractor and the second deadline is a further period as prescribed in the schedule.

Table 2: Prescribed periods for completion of repairs under the Right to Repairs Regs

Defect	No. of Working Days
Total loss of electric power	1
Partial loss of electric power	3
Unsafe power or lighting socket, or electrical fitting	1
Total loss of water supply	1
Partial loss of water supply	3
Total or partial loss of gas supply	1
Blocked flue to open fire or boiler	1
Total or partial loss of space or water heating between 31st October and 1st May	1
Total or partial loss of space or water heating between 30th April and 1st November	3
Blocked or leaking foul drain, soil stack or (where there is no other working toilet in the dwelling-house) toilet pan	1
Toilet not flushing (where there is no other working toilet in the dwelling-house)	1
Blocked sink, bath or basin	3
Tap which cannot be turned	3
Leaking from water or heating pipe, tank or cistern	1
Leaking roof	7
Insecure external window, door or lock	1
Loose or detached banister or hand rail	3
Rotten timber flooring or stair tread	3
Door entry phone not working	7
Mechanical extractor fan in internal kitchen or bathroom not working	7
NB Where there is more than one repair required, the prescribed periods run concurrently (not consecutively).	

⁹ SI 1994 No.133, as amended by SI 1994 No.844 and SI 1997 No.73.

ANNEX C

Staff training

- C.01 All staff involved in the management, maintenance and repair should receive training on the local authority structure, repair and maintenance procedures, the landlord's obligations, legal proceedings, and court practice. The content of these courses should be geared towards the different responsibilities and roles of staff.
- C.02 In addition, staff should receive specialist training relevant to their own particular role and responsibilities. For example, all staff expected to use computers should have adequate training in Information Technology and the systems used by the authority, and all staff inspecting properties should receive training in the identification of building defects (such as dampness) and of the appropriate remedies.

One authority recognised that training of staff is crucial in preventing threatened litigation becoming reality. It realised that the authority 'fell down on the competence of officers engaged in surveying'. It was suggested that 40% of work associated with s.82 action¹⁰ involved damp proofing, but only one surveyor was qualified to deal with the problem. Consultants were used for dampness surveys until the training programme was completed.

All staff involved in the management, maintenance and repair procedures should have access to current publications and material, both technical and legal. As the law and practice changes frequently, this material should be kept up-to-date and staff informed of new acquisitions. Staff should be encouraged and given time to read and refer to this material.

- C.03 There should be procedures for regularly updating all staff. This should include information on changes in practice and procedures and new legislation and case law and its implications.

There are a variety of ways this can be encouraged. Video training could be introduced, staff days or meetings could be organised several times a year and would enable repair related staff to discuss issues, and legal practice or in-house lawyers could provide legal up-dates.

OUTLINE OF SUGGESTED TRAINING COURSES

- C.04 Below are suggestions for some training courses, including suggested contents. These suggestions are related specifically to housing disrepair litigation and are in addition to any training on housing practice, policy, management and maintenance.

¹⁰ The Statutory Nuisance provisions of the Environmental Protection Act 1990.

COMPUTER LITERACY

All staff who are expected to use computers should have adequate training. In one example, office staff are trained so that they will all be European Computer Driving Licence (ECDL) qualified.

- C.05 The ECDL is an internationally-recognised standard of competence certifying that the holder has the knowledge and skill needed to use the most common computer applications efficiently and productively. To gain the ECDL, the applicant must pass one theoretical and six practical tests. These are administered throughout Europe by accredited Test Centres – in the UK it is by the British Computer Society. The tests cover the seven ECDL modules:
- i. Basic concepts of Information Technology.
 - ii. Using the computer and managing files.
 - iii. Word Processing.
 - iv. Spreadsheets.
 - v. Database.
 - vi. Presentation.
 - vii. Information and Communication.

INSPECTIONS AND PREPARATION OF REPORTS

- C.06 Course content:
- i. Protocols for inspecting a dwelling, eg, defining the front, defining left and right, identifying rooms, identifying elevations.
 - ii. What constitutes a defect or a fault to a dwelling?
 - iii. Determining when further investigations are necessary.
 - iv. Determining remedial action.
 - v. Contents of a report.

The course is suitable for staff expected to survey dwellings and identify appropriate remedial measures.

IDENTIFYING DAMPNESS, THE CAUSE AND THE SOLUTION

C.07 Course content:

- i. Defining 'dampness'.
- ii. The importance of dampness (the effect and costs to the owner and the occupier).
- iii. Causes of dampness, eg, rising, salt contamination, penetrating, traumatic, and condensation – including for each the characteristics, the causes, the impact, the investigation(s), and the remedies.

The course is suitable for staff expected to survey dwellings and identify appropriate remedial measures.

LANDLORD'S OBLIGATION FOR REPAIR AND CONDITION

C.08 Course content:

- i. An outline of the standards and obligations – including Statutory Nuisance, Express and Implied repairing obligations, and duties of care.
- ii. The interpretation of each and the implication for housing conditions
- iii. Suggestion for good practice – including determining the appropriate response for each stage or deadline.

The course is suitable for all staff involved in the repair and maintenance and who may be involved at any stage.

THE ENGLISH LEGAL SYSTEM

C.09 Course content:

- i. Sources of English Law – including Parliament and the Courts.
- ii. The English Court System.
- iii. The Courts – Magistrates' Courts, Crown Courts and County Courts.
- iv. Court procedure – Criminal and Civil.
- v. Evidence.

The course is suitable for all staff who may be involved in collecting, preparing and/or giving evidence.

PRESENTING EVIDENCE

C.10 Course content:

- i. What is evidence?
- ii. Reports, documents and other non-verbal evidence.
- iii. Disclosure and privilege.
- iv. The expert, including working with other experts.
- v. Presentation of evidence.

The course is suitable for all staff, including experts, who may be involved in collecting, preparing and giving evidence.