



**LAMB**  
**CHAMBERS**  
BARRISTERS

23 February 2022

---

**STATUTORY REPAIR: RESIDENTIAL  
HOUSING**

---



**LAMB**  
**CHAMBERS**  
BARRISTERS

## Presenter



### **Elizabeth Dwomoh**

Elizabeth is an established property practitioner with particular expertise in the fields of housing, commercial and residential landlord and tenant law.



**LAMB**  
CHAMBERS  
BARRISTERS

## Aim

This seminar will focus of the following areas:

- A landlord's statutory repairing obligations under section 11 of the Landlord and Tenant Act 1985 ("the 1985 Act") and section 4 of the Defective Premises Act 1972 ("the 1972 Act")
- Housing standards in relation to gas safety, energy performance and electrical safety
- A spotlight on damp and mould under the fitness for human habitation standards under sections 9A to 10 of the 1985 Act as amended by the Homes (Fitness for Human Habitation) Act 2018 ("the 2018 Act")





**LAMB  
CHAMBERS**  
BARRISTERS

## Landlords statutory repairing obligation: section 11 of the 1985 Act

The applicability of section 11 of the 1985 Act

- Tenants who occupy their properties under short leases; namely, a lease granted for a term of not more than 7 years
- Assured tenancy if it is not a shared ownership lease and is granted for a fixed term of 7 years or more by a



**LAMB  
CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: section 11 of the 1985 Act**

For a tenant to succeed in an action for disrepair under section 11 of the 1985 Act three elements must be proved:

- Breach of the statutory repairing covenant
- Notice of the alleged disrepair
- Failure to effect repairs within a reasonable period of time



**LAMB  
CHAMBERS**  
BARRISTERS



## **Landlords statutory repairing obligation: section 11 of the 1985 Act**

### Breach of the implied repairing covenant under section 11

Section 11(1) – places an obligation on the landlord to:

- to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes)





**LAMB**  
CHAMBERS  
BARRISTERS

## Landlords statutory repairing obligation: section 11 of the 1985 Act

Breach of the implied repairing covenant under section 11 (cont.)

- to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity)



**LAMB  
CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: section 11 of the 1985 Act**

Breach of the implied repairing covenant under section 11 (cont.)

- to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.





**LAMB**  
CHAMBERS  
BARRISTERS

## **Landlords statutory repairing obligation: section 11 of the 1985 Act**

Section 11(1A) of the 1985 imposes a repairing obligation on the landlord to:

- keep in repair the structure and exterior of the building in which the tenant's property is situated (including drains, gutters and external pipes);
- keep in repair and proper working order the installations for the supply of water, gas and electricity and for sanitation in the building that directly or indirectly serves the property;
- and



**LAMB**  
**CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: section 11 of the 1985 Act**

Breach of the implied repairing covenant under section 11 (cont.)

- To keep in repair and proper working order the installations in the building for space heating and heating water that directly or indirectly serves the property.



**LAMB  
CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: section 11 of the 1985 Act**

A landlord will not be found to be in breach of the covenant to 'repair' under section 11 of the 1985 Act unless there a material deterioration in the property from the physical condition in which it was granted





**LAMB  
CHAMBERS**  
BARRISTERS

## Landlords statutory repairing obligation: section 11 of the 1985 Act

### Notice of disrepair

- The liability of the landlord for a breach of the implied repairing covenant is subject to the precondition that the landlord, or the landlord's agent, has been given notice of the disrepair. The requirement for notice applies even if the disrepair in question existed at the date of the tenancy.

*Uniproducts (Manchester) Limited v Rose Furnishers Limited* [1956] 1 W.L.R. 45



**LAMB  
CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: section 11 of the 1985 Act** Notice of disrepair

Examples of records that a tenant should keep:

- Letters or emails sent to the landlord that provide a full description of the disrepair alleged and the date that notice was given
- Date stamped photographs of the disrepair and any items that have been damaged as a result of the disrepair



**LAMB  
CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: section 11 of the 1985 Act**

### Notice of disrepair

Examples of records that a tenant should keep:

- Logs telephone calls made by the tenant to their landlord with details of the date and times of the calls
- Social housing tenants should ask their landlord for a copy of the disrepair records that should also provide a record of the items of disrepair that have





**LAMB  
CHAMBERS**  
BARRISTERS

## Landlords statutory repairing obligation: section 11 of the 1985 Act

Reasonable time to effect repairs

- There is no breach until a reasonable time has elapsed in which the repair could have been carried out

*Calabar Properties v Sticher* [1984] 1 WLR 287



**LAMB  
CHAMBERS**  
BARRISTERS

## Landlords statutory repairing obligation: section 11 of the 1985 Act

The schedule to the Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994 (SI 1994/133)

Defect	Prescribed period (working days)
Leaking roof	7
Toilet not flushing (where there is no other working toilet in the dwelling-house)	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



**LAMB  
CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: section 11 of the 1985 Act** Access

A landlord can rely on the tenant's failure to provide access to inspect and carry out repairs as a defence to a claim for damages for disrepair brought by the tenant





**LAMB  
CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: Defective Premises Act 1972**

### Duty of care under s.4 of the 1972 Act

A duty of care is owed by landlords who are under an implied or express obligation to repair, maintain and or enter a tenant's property to effect repairs.



**LAMB  
CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: Defective Premises Act 1972**

### Duty of care under s.4 of the 1972 Act

The duty is to ensure that all persons who might reasonably be expected to be affected by “relevant defects” in the state of the property are reasonably safe from personal injury or from damage to their property caused by the relevant defect.



**LAMB**  
**CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: Defective Premises Act 1972**

To whom is the duty owed?

The duty is owed not only to the tenant, but also to any other occupier of the property as well as visitor to the property.





**LAMB  
CHAMBERS**  
BARRISTERS

# **Landlords statutory repairing obligation: Defective Premises Act 1972**

## Repairing obligations during Covid-19

A Landlord's contractual and statutory repairing obligations were not suspended by the Covid-19 pandemic.



**LAMB  
CHAMBERS**  
BARRISTERS

## **Landlords statutory repairing obligation: Defective Premises Act 1972**

### Repairing obligations during Covid-19

In circumstances where landlords have not been able to carry out repairs due to a tenant or a member of the tenant's family self-isolating or shielding a detailed record should be kept of the attempts made by the landlord to carry out the repairs



**LAMB  
CHAMBERS**  
BARRISTERS

## Housing standards

### Gas safety checks

- A landlord has a statutory obligation to ensure that a gas safety check is carried out to all gas pipework, gas appliances and flues that serve the property

Regulation 36(3) and regulation 36(4) of Gas Safety (Installation and Use) Regulations 1998





**LAMB**  
CHAMBERS  
BARRISTERS

## Housing standards

### Gas safety checks

- A landlord must give an existing tenant a copy of the most current gas safety record within 28 days of the gas safety inspection
- a copy of the current gas safety record must be given to a tenant prior to the tenant going into occupation of the property



**LAMB**  
CHAMBERS  
BARRISTERS

## Housing standards

### Gas safety checks and Covid-19

- Throughout the Covid-19 pandemic, landlords were still required to comply with their gas safety obligations under the 1998 Regulations.



**LAMB**  
**CHAMBERS**  
BARRISTERS

## Housing standards

### Minimum Energy Efficiency Standards

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI 2015/962, as amended (“the MEES Regulations”) set minimum energy efficiency standards for properties





**LAMB**  
**CHAMBERS**  
BARRISTERS

## **Housing standards**

### Minimum Energy Efficiency Standards

A property that achieves a rating less than band E is deemed to be substandard.



**LAMB**  
**CHAMBERS**  
BARRISTERS

## Housing standards

### Minimum Energy Efficiency Standards

The MEES Regulations applies to all tenancies let under an AST or an assured tenancy. It does not, however, apply to registered providers of social housing.



**LAMB  
CHAMBERS**  
BARRISTERS

## Housing standards

### Minimum Energy Efficiency Standards

A landlord may obtain an exemption in certain prescribed circumstances. A landlord who relies on an exemption in respect of his property must be registered on the National Private Rented Sector (PRS) Exemptions Register.





**LAMB**  
**CHAMBERS**  
BARRISTERS

## **Housing standards**

### Electrical Safety Standards

Since 1 April 2021, the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“The Electrical Safety Standard Regulations”) apply to the majority of private rented sector tenancies.



**LAMB  
CHAMBERS**  
BARRISTERS

## **Housing standards**

### Electrical Safety Standards

The Electrical Safety Standard Regulations places a statutory obligation on landlords to ensure that their rental properties comply with the current wiring regulations and that they are maintained throughout the course of the tenancy.



**LAMB**  
**CHAMBERS**  
BARRISTERS

## **Housing Safety standards**

### Electrical Safety Standards

Landlords must engage a qualified engineer to carry out an electrical safety check to the property before their tenant goes into occupation of the property





**LAMB**  
**CHAMBERS**  
BARRISTERS

## **Housing standards**

### Electrical Safety Standards

A failure to comply with the Electrical Safety Standard Regulations could result in a local authority taking enforcement action against a landlord



**LAMB  
CHAMBERS**  
BARRISTERS

## **Spotlight on damp and mould: Homes (Fitness for Human Habitation) Act 2018**

The Homes (Fitness for Human Habitation) Act 2018 (“the 2018 Act”) provides tenants with improved enforcement mechanisms to force their landlords to deal with dangerous and unhealthy housing conditions.



**LAMB**  
**CHAMBERS**  
BARRISTERS

## **Spotlight on damp and mould: Homes (Fitness for Human Habitation) Act 2018**

Presence of mould and condensation damp are actionable as disrepair if the criteria is met





**LAMB  
CHAMBERS**  
BARRISTERS

## **Spotlight on damp and mould: Homes (Fitness for Human Habitation) Act 2018**

### **Relevant provisions**

9A(1) In a lease to which this section applies of a dwelling in England... there is implied a covenant by the lessor that the dwelling—

(a) is fit for human habitation at the time the lease is granted or otherwise created or, if later, at the beginning of the term of the lease, and

(b) will remain fit for human habitation during the term of the lease



**LAMB**  
**CHAMBERS**  
BARRISTERS

## **Spotlight on damp and mould: Homes (Fitness for Human Habitation) Act 2018**

Section 10 of the 1985 sets out factors that the court must consider:

- repair
- stability
- freedom from damp
- internal arrangement
- natural lighting



**LAMB**  
**CHAMBERS**  
BARRISTERS

## Spotlight on damp and mould: Homes (Fitness for Human Habitation) Act 2018

- ventilation
- water supply
- drainage and sanitary conveniences
- facilities for preparation and cooking of food and for the disposal of waste water; in relation to a dwelling in England
- any prescribed hazard





**LAMB**  
**CHAMBERS**  
BARRISTERS

## **Spotlight on damp and mould: Homes (Fitness for Human Habitation) Act 2018**

A “prescribed hazard” is defined by the Housing Health and Safety Rating System (England) Regulations 2005. The factors listed in the 2005 Regulations broaden the fitness for human habitation criteria. Importantly it includes damp and mould growth and excess cold which can be a contributing factor to condensation damp.



**LAMB  
CHAMBERS**  
BARRISTERS

## **Spotlight on damp and mould: Homes (Fitness for Human Habitation) Act 2018**

### Exemptions

Subsections 9A(2) and 9A(3) of the 1985 Act, exempt a landlord from liability where, for example, the unfitness is wholly or mainly attributable to the tenant's own breach of covenant or the tenant has not used the property in a tenant-like manner



**LAMB**  
**CHAMBERS**  
BARRISTERS

**Any questions?**





**LAMB**  
**CHAMBERS**  
BARRISTERS

[elizabethdwomoh@lambchambers.co.uk](mailto:elizabethdwomoh@lambchambers.co.uk)

**Lamb Chambers**  
**Temple**  
**London**  
**EC4Y 7AS**

**These slides and the associated seminar are provided for training purposes only. They do not constitute legal advice and liability for any reliance placed on them is disclaimed.**