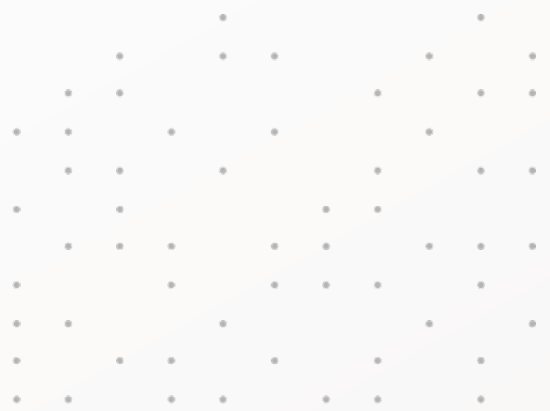






# Housing surveyors in housing law cases

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# Two types of cases

- Housing Conditions Claims
- Fair Rents

# Expert evidence in Housing Conditions Claims

- Housing conditions claims are claims for breach of tenancy and breach of the implied covenants in sections 9A and 11 of the Landlord and Tenant Act 1985.
- There is a Pre-Action Protocol for Housing Conditions Claims (England)



# Protocol

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- Experts are discussed in paragraph 7 of the Protocol
  - (a) Parties are reminded that the Civil Procedure Rules provide that expert evidence should be restricted to that which is necessary and that the court's permission is required to use an expert's report. The court may limit the amount of experts' fees and expenses recoverable from another party.
  - (b) When instructing an expert, the parties must have regard to CPR 35, CPR Practice Direction 35 and the Guidance for the Instruction of Experts in Civil Claims (2014)

# Protocol cont.

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(c) In some cases, it might not be necessary to instruct an expert to provide evidence of the housing conditions, for example, if the only issue relates to the level of any damages claimed. It may be advisable for tenants to take photographs or video footage of any defects before and after works.

(d) The expert should be instructed to report on all adverse housing conditions which the landlord ought reasonably to know about, or which the expert ought reasonably to report on. The expert should be asked to provide a schedule of works, an estimate of the costs of those works, and to list any urgent works.

# Some things to consider

Funding cases: Legal Aid and Conditional fees

Not all experts are surveyors

Not every case needs an expert

# Fair (registered) rents

- Rent officers have the power to assess and register fair rents for most private-sector residential accommodations let before 15 January 1989. The registered rent is the maximum that can usually be charged by a landlord.
- Once a fair rent has been registered it cannot generally be reconsidered for a period of two years. After the expiry of the two-year period either the landlord or the tenant can apply for a new fair rent to be registered.
- However, an application can be made before the expiry of the two-year period where there has been a change in circumstances.

# Change of circumstances

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- A registered rent can be reconsidered before the expiry of two years on the application of either party if there is a change in one of the following, which makes the registered rent no longer a fair rent:
  - **the condition of the property including improvements**
  - the terms of the tenancy
  - the quantity, quality or condition of any furniture
  - any other circumstances considered when the rent was registered.



# Determining a fair rent

- in determining a fair rent regard must be had to all the circumstances, but not to personal circumstances.
- In particular the following must be considered:
  - **the age, character, locality and state of repair of the dwelling**
  - the quantity, quality and condition of any furniture provided for use under the tenancy
  - any premium which has been or may be paid on the grant, renewal, continuance or assignment of the tenancy.
- The determination of a fair rent should disregard:
  - personal circumstances of both the landlord and tenant.
  - **disrepair attributable to failure by the tenant (or her/his predecessor) to comply with terms of her/his contract**
  - **any improvements carried out by the tenant over and above the obligations of the tenancy agreement.**

# Comparables

- Although the courts have acknowledged that there may be more than one approach to determining a fair rent, every approach must start from a comparison with a market rent which may then be adjusted to take into account scarcity and any disregards
- Evidence of market rents can be found by looking at advertisements for similar rented property in local newspapers, advertisements in shop windows etc.
- Evidence can also be provided by a surveyor.

# Other factors influencing the level of fair rents

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- Furniture.
  - Service charges.
  - **Disrepair** – Where a landlord is not fulfilling her/his repairing obligations (for example under section 11 of the Landlord and Tenant Act 1985), the rent set should reflect this and evidence can be presented to the rent officer or the Tribunal such as environmental health officer reports or repair notices which have been served.
  - **Inadequate lighting and heating, poor natural light**, nearby disruptive businesses, access to local amenities, heavy traffic and the **size of rooms** – all factors which may influence the level at which the fair rent is set.

# Exempt from the maximum fair rent limit

- Where an application for a fair rent has been made after 1 February 1999 and the rent has been previously registered as a fair rent under the Rent Act 1977, then any increase will be subject to a maximum limit: Rent Acts (Maximum Fair Rent) Order 1999 SI 1999/6.
- The limit does not apply where:
  - the rent has not previously been registered or
  - **if, as a result of repairs or improvements carried out by the landlord to the dwelling-house or the common parts at any time since the previous rent registration, the fair rent determined is at least 15 per cent more than the existing registered rent. Repairs or improvements include the replacement of any fixture or fitting. Common parts includes the structure and exterior of the building and common facilities provided for the occupiers of the dwelling-houses in the building.**

# Pro bono surveyors

- The Chartered Surveyors' Voluntary Service (CSVS) is a registered charity supported by RICS.
- Through the service, volunteer surveyors provide free property advice to those who would not otherwise be able to receive the support they require.
- A referral can be made through the Citizens' Advice, who will contact the RICS to obtain details of a CSVS surveyor.
- Generally, the service involves a home visit by the CSVS surveyor and a follow-up report to Citizens' Advice.
- While the service is not means tested, it is up to the Citizens' Advice to decide who should be referred for this free assistance.
- <https://www.rics.org/uk/about-rics/responsible-business/welfare-and-corporate-responsibilities/chartered-surveyors-voluntary-service/>

# Cases they can assist in

- Repairs, service charges, leases - your rights and the landlord's responsibility in rented housing
- Building disputes - advising on the quality of work, possible defects and payment disputes
- Rents - advising on appeals for fair rent claims
- Grants - advising on the work required to obtain housing improvements, conservation and repair grants
- Planning - when you need permission and how to handle disputes
- Compulsory purchase - your rights and how to appeal
- Council tax disputes
- Environmental and conservation matters
- Rural problems, boundary and similar disputes



# Instructing a surveyor: CPR Part 35

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- Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.
  - It is the duty of experts to help the court on matters within their expertise. This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.
  - No party may call an expert or put in evidence an expert's report without the court's permission.
  - When parties apply for permission they must provide an estimate of the costs of the proposed expert evidence and identify –
    - (a) the field in which expert evidence is required and the issues which the expert evidence will address; and
    - (b) where practicable, the name of the proposed expert.
  - Expert evidence is to be given in a written report unless the court directs otherwise.
  - If a claim is on the small claims track or the fast track, the court will not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.
  - Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert

# Contents of report: 35.10

- An expert's report must comply with the requirements set out in Practice Direction 35.
- At the end of an expert's report there must be a statement that the expert understands and has complied with their duty to the court.
- The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.
- The instructions referred to in paragraph (3) shall not be privileged against disclosure but the court will not, in relation to those instructions –
  - (a) order disclosure of any specific document; or
  - (b) permit any questioning in court, other than by the party who instructed the expert,
- unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under paragraph (3) to be inaccurate or incomplete.



# Guidance for the Instruction of Experts in Civil Claims (2014)

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Those instructing experts should ensure that they give clear instructions (and attach relevant documents), including the following:

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a. basic information, such as names, addresses, telephone numbers, dates of incidents and any relevant claim reference numbers;

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b. the nature of the expertise required;

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c. the purpose of the advice or report, a description of the matter(s) to be investigated, the issues to be addressed and the identity of all parties;

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d. the statement(s) of case (if any), those documents which form part of disclosure and witness statements and expert reports that are relevant to the advice or report, making clear which have been served and which are drafts and when the latter are likely to be served;

# Guidance cont.

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- e. where proceedings have not been started, whether they are contemplated and, if so, whether the expert is being asked only for advice;
- f. an outline programme, consistent with good case management and the expert's availability, for the completion and delivery of each stage of the expert's work; and
- g. where proceedings have been started, the dates of any hearings (including any case/costs management conferences and/or pre-trial reviews), the dates fixed by the court or agreed between the parties for the exchange of experts' reports and any other relevant deadlines to be adhered to, the name of the court, the claim number, the track to which the claim has been allocated and whether there is a specific budget for the experts' fees.

# First-tier Tribunal (Property Chamber)

- It is the duty of an expert to help the Tribunal on matters within the expert's expertise and this duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.
- No party may adduce expert evidence without the permission of the Tribunal.
- Expert evidence is to be given in a written report unless the Tribunal directs otherwise.
- A written report of an expert must contain a statement that the expert understands the duty in paragraph (1) and has complied with it and contain a statement of truth
- include details of the expert's qualifications and relevant experience and contain a summary of the instructions the expert has received for the making of the report



# Expert Tribunal

Note that when determining a fair rent, the Tribunal is entitled to prefer the results of its own inspection of premises, rather than a surveyor's report

*R (on the application of Gidvani) v London Rent Assessment Panel [2007] EWHC 2525.*

# A clinic example

- Landlord: Women's Pioneer Housing
- The rent was registered in November 1991 at £187pcm inclusive of services of £27.22pcm.
- The tenant moved into the property by way of transfer.
- Despite the rent being registered, at the start of the tenancy the rent was set by the landlord at £641.50 pcm.
- In 2018 the rent was assessed by the Rent Officer who deemed that the Rent Acts (Maximum Fair Rent) Order 1999 would apply.
- The rent was assessed by the Rent Officer at £435.69 pcm including service charges
- The landlord made two applications to have the rent determined by the First-tier Tribunal.
- The landlord sought to argue that the property has been improved and therefore the 'rent cap' did not apply.

# Expert evidence

- Our Trainee Solicitor, Hannah Lennox, worked with Joe Fraser MSc MRICS acting as 'Expert Witness'.
- Joe is a principal surveyor of a firm of general practice Chartered Surveyors and acted pro bono under the RICS scheme.
- Joe:
  - considered the schedule of works provided by the landlord for works carried out with 'before' and 'after' photos.
  - inspected the property
  - considered whether the works are improvements or whether the works were required to enable the property to be suitable for letting
- *In summary I do not believe that the works carried out by the landlord were improvements, it would appear that they were the minimum works required to make the property suitable for letting.*

# Tribunal decision

- Women's Pioneer Housing instructed a large and well-known firm of solicitors and were represented by Counsel
- Hannah and Joe represented the tenant
- The Tribunal members inspected the Property
- They concluded that the works were not improvements and therefore the fair rent cap applied.
- Rent = £435.69 pcm including service charges