

# Disrepair E-Briefing

## March 2009

Welcome to our first Disrepair E-briefing of 2009. In this first of the series we will be looking at some key issues that may affect your organisation this year and we will also alert you to some legal and practical issues to be aware of.

We greatly appreciate your feedback so please get in touch if you want to discuss any of the matters further.

### In this issue:

- Reducing vulnerability to Disrepair Claims
- Choosing the right 'Expert'
- Asbestos & the law

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If I can help with any of the issues in this E-Briefing then please contact me on the number or email address below.

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## Tolerated Trespassers & Disrepair Claims

### *“What Tolerated Trespassers?”*

The eventual abolition of TTs was announced in the Housing & Regeneration Bill and our clients were advised to trawl their case files to check whether any tenants who were at that point TTs had notified repairs which remained outstanding. In the case that any repairs were found, we advised that these be done promptly in order to minimise the possibility of a Claim being brought and damages being awarded later. The Bill eventually received Royal Assent (i.e. it became an Act) and Schedule 11 (regarding TTs) is due to come into force on the 6<sup>th</sup> April 2009.

As a result of the House of Lords decision in *Knowsley v White* published on the 10<sup>th</sup> December 2008, the status of Tolerated Trespasser (in Assured Tenancies) was completely abolished with immediate effect. Not only did this mean that TT status had not apparently existed but this also left RSLs vulnerable to Claims for Disrepair which would go back for anything up to 6 years.

### **Reducing your Vulnerability to Disrepair Claims**

We would still strongly urge Landlords to check their files and get all work done as soon as possible, as the former Tolerated Trespassers may then decide not to pursue claims and even if Claims are issued then damages will be at a much lower level. In addition, any Injunctions for Orders for Specific Performance will not be necessary which will also reduce the financial burden on clients.

If you need any advice on the above, Whiteheads offers case surgeries to discuss any concerns and help clients develop action plans to avoid (where possible) any potential Disrepair claims. Just give us a call.

## Using Expert Witnesses

Landlords will be aware that whenever Disrepair proceedings are contemplated, tenants' Solicitors will (under the pre-action protocol) write to them suggesting the appointment of a single joint expert to inspect the property. This expert will then prepare a report and a Scott schedule setting out the works to be undertaken. This report will then be produced before the Court should any proceedings be issued.

If you do not agree with the tenant's choice of expert, you are of course entitled to nominate someone else. Both experts should attend the inspection together so no misunderstandings occur.

### Surveyor or other Specialist?

When a decision is made to appoint a surveyor or other expert, it is vital to ensure that the contractor is experienced and reputable and if in doubt, check with your legal advisers who should keep a list of approved contractors. At Whiteheads, we would also always advise clients to use a Chartered Building Surveyor (CBS) and **not** an Environmental Health Consultant (EHC). There is a vast difference in the qualifications, skills and expertise of these two professionals, however it is surprising how many tenants' Solicitors will readily suggest appointing an Environmental Health Consultant.

The report that you will receive from a CBS will be much more comprehensive and authoritative and you should be able to rely on it with confidence so that all works completed will remedy the problems and avoid more difficulties further down the line.

### How important is this?

A recent example of the importance of instructing the right expert was a commercial dilapidations claim, where we retained one of our approved specialist Surveyors to investigate a large claim for refurbishment at the end of a 15-year lease. The other side were claiming exorbitant expenditure but thanks to using an expert with a great deal of experience we were able to challenge the landlord on the costs and save our client **£28,000**.

Contact us if you have any queries about using expert surveyors.

### Important Publications & Dates for your Diary

- Mitchell v Glasgow City Council (Published February 2009)\*
- New Powers against gangs in the Policing Bill
- Weaver v London & Quadrant HT (expected February / March)
- Family Intervention Tenancies (FITs) Guidance from Communities & Local Government\*
- Schedule 11, Housing & Regeneration Act (in force from 6th April)

*\*Our recent Bulletin on this topic can be found on our website.  
[www.whiteheadsols.co.uk](http://www.whiteheadsols.co.uk)*

## Lunchtime Seminar Programme 2009

This year, Whiteheads will be holding the following seminars. If you and your colleagues would like to attend, please email [neil.whitehead@whiteheadsols.co.uk](mailto:neil.whitehead@whiteheadsols.co.uk) and you will receive a booking form. These sessions are offered FREE OF CHARGE but are on a first-come first-served basis.

### Property Matters

25<sup>th</sup> March – Salford (Contour Group) (11:00 start)  
 May – London (TBC)  
 22<sup>nd</sup> April – Bristol (Places for People)  
 11<sup>th</sup> June – Leeds (Leeds Federated)  
 10<sup>th</sup> June – Gainsborough (Acis Group)  
 21<sup>st</sup> September – Preston (Community Gateway)  
 20<sup>th</sup> October – Bournemouth (Raglan Housing) (10am - 1pm)  
 4<sup>th</sup> November – Gainsborough (Acis Group)  
 8<sup>th</sup> December – Bolton (Regenda)

### Disrepair

17<sup>th</sup> March – Manchester (Harvest Group)  
 14<sup>th</sup> May – London (Places for People)  
 4<sup>th</sup> June – Sheffield (Parkway Housing)  
 9<sup>th</sup> June – Bristol (Places for People)  
 25<sup>th</sup> June – Wakefield (Chevin Housing)  
 10<sup>th</sup> September – Preston (Places for People)  
 20<sup>th</sup> October – Bournemouth (Raglan Housing) (1pm- 4pm)  
 25<sup>th</sup> November – Gainsborough (Acis Group)  
 3<sup>rd</sup> December – Bolton (Contour Group)

### ASB / Nuisance

30<sup>th</sup> March – Manchester (Harvest Group)  
 26<sup>th</sup> March – Leeds (Connect Housing)  
 20<sup>th</sup> May – London (Places for People)  
 17<sup>th</sup> June – Leeds (Pennine Housing 2000)  
 25<sup>th</sup> June – Bristol (Places for People)  
 7<sup>th</sup> September – Preston (Community Gateway)  
 9<sup>th</sup> September – Leeds (Leeds Fed)  
 6<sup>th</sup> October – Bournemouth (Raglan Housing) (10am-1pm)  
 12<sup>th</sup> November – Sheffield (Arches Housing)  
 26<sup>th</sup> November – Wakefield (Chevin Housing)  
 2<sup>nd</sup> December – Bolton (Regenda Group)

### Housing Management

20<sup>th</sup> March – Salford (Contour Group) (12:00 start)  
 May – London (TBC)  
 25<sup>th</sup> June – Leeds (Connect Housing)  
 23<sup>rd</sup> June – Sheffield (Arches Housing)  
 17<sup>th</sup> September – Preston (Places for People)  
 6<sup>th</sup> October – Bournemouth (Raglan Housing) (1pm-4pm)  
 19<sup>th</sup> November – Sheffield (Parkway Housing)  
 11<sup>th</sup> December – Bolton (Regenda Group)

All of the above sessions will commence at 10:30 and finish at 13:30 unless otherwise stated.

A buffet lunch will also be provided. Please advise us of any dietary requirements.

The programme will be distributed approximately a month before each session and delegates are invited to submit topics of general interest they would like to be covered.

## Dealing with Asbestos

There is a large number of provisions relating to the control of asbestos and this is an issue which can cause expensive problems for Landlords.

In itself, the presence of asbestos is unlikely to amount to a breach of the repairing obligation in Section 11 of the Landlord & Tenant Act 1985, however, Landlords should be aware that the management and removal of asbestos is covered by a number of statutory provisions.

Of the above provisions the most important is the Control of Asbestos Regulations (CAR) 2006 which imposes a duty on Landlords to manage the asbestos within a building. This duty includes the assessment of risk and devising a plan for dealing with any asbestos within the building. In some cases, an assessment may show that leaving it in place will be the best option, however in other cases, removal by specialist contractors may be required.

Regulation 4 of the CAR requires every person to co-operate with duty holders (such as a landlord) to enable them to comply with their obligations. This means that the Landlord is still technically obliged to carry out all the relevant investigations even if a tenant fails to provide access. In such cases, Injunction proceedings against the tenant may need to be brought.

For further detailed information on asbestos, Landlords should refer to the approved code of practice "*The Management of Asbestos in Non-domestic Properties*" L127 ISBN 978-07176-6209-8. The link to the code appears on the HSE website which also contains further guidance.

If you need any advice on Injunction proceedings and how to use them effectively, please get in touch.

## New Training Course for 2009

### Disrepair Masterclass

This course looks at the various stages of Disrepair claims and the strategies you can use to limit liability and reduce costs. Starting with the legal framework, the course will use real examples as case studies and aims to help practitioners build a case.

For further details, please email [training@whiteheadsols.co.uk](mailto:training@whiteheadsols.co.uk)