



**Disrepair and the small claims threshold**  
**Submissions to the DCA**

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SHLA, Top floor, 71 St John Street, London, EC1M 4NJ

**SHLA: a forum for social housing professionals & their lawyers**

Registered office: Salisbury House, London Wall, London, EC2M 5QY Company no.: 5606493

## About SHLA

The Social Housing Law Association ('SHLA') is an organisation of social housing professionals and their lawyers. Its members work or regularly act for social landlords (local authorities and registered social landlords).

SHLA aims to:

1. Further the interests of social landlords.
2. Promote and develop better solutions to the legal problems faced by social landlords.
3. Provide a forum where its members can exchange and discuss ideas and information.
4. Assist in the development and training of its members.

## Background

1. These submissions relate to the DCA's consideration of whether to increase the small claims threshold for housing disrepair cases. The issue has been considered by the Constitutional Affairs Select Committee in November 2005<sup>1</sup> and in the Government's response to this report of February 2006.<sup>2</sup>
2. As a rule the small claims track is the track for any claim which has a financial value of not more than £5,000 (CPR 26.6(3)). But since April 1999 residential disrepair claimants have been treated preferentially in that their claims are usually allocated to the fast track if:
  - a) remedial work with an estimated value of more than £1,000 is sought, and
  - b) the value of damages is in excess of £1,000.

## Conclusion

3. It is SHLA's opinion that residential disrepair claimants should be treated on the same footing as other claimants and hence that the small claims track should be the normal track for any disrepair claim that has a value of not more than £5,000.
4. It is our experience that social landlords usually keep their stock in good repair and that there are few claims worth over £5,000. Disrepair as a social, as opposed to an isolated, problem does not exist. SHLA is concerned at the resources that social landlords have to use to resist claims that lack substance and it believes that if the small claims limit were increased to £5,000 then many of these unmeritorious claims would no longer be brought.

## The problem of unmeritorious claims

5. SHLA accepts that there are many properties where housing conditions should be better in terms of matters such as heating, thermal insulation, sound insulation, amenities and facilities. But these are not issues of disrepair and the considerable resources that social landlords are having to spend on unmeritorious claims brought by a few of their tenants inhibits their ability to improve housing conditions for the benefit of all their tenants.
6. SHLA's experience is that many unmeritorious claims are brought because tenants and their advisers fail to distinguish between issues of *disrepair* (which may be the landlord's responsibility) and issues of *improvement* (which probably are not the landlord's responsibility). Other claims are brought for extraneous reasons such as to incorrectly suggest that there is a defence to a rent arrears possession claim or in order to seek a transfer. But whatever the reason SHLA is aware that far too many 'disrepair' claims are devoid of merit.
7. The problem flourishes because the playing field is not level when claimants obtain public funding: win or lose claimants know that they will probably not have

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<sup>1</sup> <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmconst/519/51908.htm>

<sup>2</sup> [http://www.dca.gov.uk/majrep/smallclaim/casc\\_smallclaim.pdf](http://www.dca.gov.uk/majrep/smallclaim/casc_smallclaim.pdf)

to pay any legal costs, whereas landlords know that even if they win in court they will lose financially because of the improbability of them being able to recover any of their costs from the publicly funded claimant. This inequality gives unmeritorious claims a significant nuisance value and it means that social landlords frequently settle unmeritorious claims on undeserved terms merely to save costs, which can be substantial.

8. If the threshold for allocating to the small claims track were increased to £5,000 then it would be harder for claimants to obtain public funding and the problem of unmeritorious disrepair claims would be significantly reduced.
9. Although it might be thought that the availability of public funding would enable professional advisers to advise claimants of the weaknesses of their cases SHLA's experience is that this does not happen. Unfortunately there are too many advisers who do not advise their clients of the weaknesses in their claims.

### **Meritorious claims**

10. As noted above, SHLA believes that nowadays there are few serious disrepair cases. Aside from the unmeritorious cases that are considered above, the more typical claim today is for modest disrepair that lasts at most for a year or two. In other words cases worth significantly less than £5,000. We do not share the Law Society's view that 'damages for disrepair are relatively low: about £1,600 per year for the most severe cases'.<sup>3</sup> It is our experience that serious cases are met with an appropriate tariff namely compensation that may equate to the rental value and for social housing this can be about £3,000 per year for general damages.<sup>4</sup> In our experience a lot of claimant's lawyers have responded to the rarity of serious disrepair cases by seeking to re-grade modest disrepair as serious disrepair. If the small claims threshold were increased to £5,000 then cases of serious disrepair that were not remedied within a year or two would continue to be allocated to the fast track.
11. We do not believe that claimants would be prejudiced if meritorious claims worth less than £5,000 were normally allocated to the small claims track. Essentially this is because we believe that litigants in person are able to present their own disrepair cases in the small claims court. This general view is bolstered by the following specific arguments.
12. First, the issues in disrepair cases are usually ones of fact such as: was a defect reported, was it repaired within a reasonable period, how much damage or inconvenience did it cause, and did the occupier refuse access. These issues are not usually assisted by the presence of either claimant lawyers or experts. District Judges have considerable experience on such issues and they tend to be fairly interventionist when faced with a litigant in person.
13. Secondly, the majority of disrepair cases do not require expert evidence and it is SHLA's experience that too many experts obscure the real issues by straying beyond relevant ones. For example, they often list items of improvement that are

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<sup>3</sup> Select Committee on Constitutional Affairs, para 47.

<sup>4</sup> *Wallace v Manchester CC* (1998) 30 HLR 1111, CA.

not items of disrepair and they thereby give claimants false hope. Some experts also address issues such as the gravity of the disrepair, which are issues for the judge.

14. Thirdly, it is SHLA's experience that fast track disrepair cases invariably cost much more than their value. Disrepair claims tend to be disproportionately resource intensive when landlord's costs and staff time are compared to the value of the claim.

### **Equal treatment for all claimants**

15. SHLA believes that all claimants should be treated equally and we do not share the view that claimants bringing disrepair claims<sup>5</sup> should be treated more favourably than those bringing any other sort of claim. The only claims that have a small claims threshold of £1,000 are personal injury claims, disrepair claims and claims brought against the police. We support the view of Lord Justice Dyson when he wrote to the Select Committee on Constitutional Affairs suggesting that the limit for housing disrepair cases could be raised to £5,000:

'There is anecdotal evidence that claimants are being encouraged by certain legal representatives to allege that the housing disrepair of which they complain has caused them to suffer modest personal injury, e.g. asthma. The potential for abuse here is obvious. The second reason given is that housing disrepair cases often require expert evidence. This is true. But so, for example, do small building claims and small claims by landlords against their tenants for damages for breach of their repairing obligations. And yet in respect of these claims, the small claims limit is £5000. In my view, it is entirely illogical to accord special treatment to housing disrepair claims.'<sup>6</sup>

16. The current £1,000 small claims threshold for disrepair claims is illogical and unnecessary and it is causing social landlords to allocate far too many resources particularly on resisting unmeritorious disrepair claims. We urge the Government to increase the small claims threshold for disrepair claims to £5,000 so as to bring disrepair claims into line with most other claims.

The Social Housing Law Association  
31st August 2006

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<sup>5</sup> Or those bringing harassment or unlawful eviction claims – see CPR 26.7(4).

<sup>6</sup> Select Committee on Constitutional Affairs, para 45.