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Tuesday 23<sup>rd</sup> January 2007

The Department of Constitutional Affairs  
3<sup>rd</sup> Floor  
Selbourne House  
54-60 Victoria Street  
London  
SW1E 6QW.

**FA0 Mr Richard Harrison**

Dear Mr Harrison,

**Constitutional Affairs Committee Report on County Courts – Small Claims Track Limit**

We write further to our meeting of 25<sup>th</sup> October during which we agreed to send you further information to substantiate our argument that the preferential treatment regarding track allocation that is given to tenants with disrepair claims should be removed. As we argue more fully in the written submission that we previously sent you SHLA is concerned at the resources that social landlords have to use to resist disrepair claims that lack merit. It believes that any disrepair claim with a value of less than £5,000 should be allocated to the small claims track. Such a reform of the Civil Procedure Rules on track allocation would not cause injustice to tenants with legitimate disrepair claims but would greatly assist social landlords to spend less on legal costs and more on improving their housing stock for the benefit of all. It would also mean that tenants with disrepair claims were treated the same way as most other claimants.

In support of our earlier submissions we now enclose the following:

1. A report from Kate Priest, principal solicitor, Birmingham City Council (pp4-5) which highlights:
  - a) The ability of claims management companies to fuel the bringing of disrepair claims.

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- b) The extent to which claimant solicitors have claimed exaggerated amounts of legal costs, which they would not be able to claim in respect of small claims cases.
  - c) The willingness of the Council to settle meritorious claims despite their likely allocation to the small claims track.
2. A report from Quentin Paterson, solicitor, (p6) with a recent example concerning Islington LBC that highlights the difficulty of reaching reasonable settlements when the claimant believes the case can be allocated to the fast track.
  3. A commentary (pp7-9) & judgment (pp10-23) in the case of *Kush Housing Association v Lewis* which illustrates a number of features that often afflict publicly funded disrepair cases:
    - a) The risk a landlord takes when deciding to fight a case even when it knows its defence to be strong.
    - b) The spurious nature of the tenant's case (the judge dismissed Mr Lewis's counterclaim in its entirety after finding that he had not made many of the complaints that he alleged and that when he did complain he 'blocked proper reasonable and friendly initiatives by [the landlord] to attempt to investigate and remedy (them)').
    - c) The use of a disrepair counterclaim to avoid paying rent and to delay the inevitable outcome of eviction (whilst his disrepair counterclaim was running Mr Lewis's rent arrears increased from £2,100 to £5,600 despite being paid housing benefit).
    - d) The disproportionately high cost of having to resist a spurious claim (£23,500 in this case).
  4. An exchange of correspondence between SHLA and the Legal Services Commission (pp 24-28) which shows the very considerable sums spent by the LSC on disrepair cases:

	2003/4		2004/5		2005/6	
	Cases	Spend (£)	Cases	Spend (£)	Cases	Spend (£)
Claimant	1,745	2,877,733	1,576	2,687,872	1,378	2,502,677
Defendant	99	374,612	67	287,906	53	148,079
3rd party	5	19,501	19	99,656	5	375,929
<b>Total</b>	<b>1,849</b>	<b>3,273,846</b>	<b>1,662</b>	<b>3,075,434</b>	<b>1,436</b>	<b>3,026,685</b>

The above figures relate to cases that were closed in the specified year. They show that the LSC is making available over £3m each year to enable about 1,500 tenants to raise disrepair claims or counterclaims each year. SHLA would make 3 points about these figures:

- a) The number of funded claims has fallen by 22% over the last two years (from 1,849 in 2003/4 to 1,436 in 2005/6). SHLA sees this fall as welcome evidence of the point made in its submission that disrepair has long since ceased to be a widespread problem and that the falling number of funded

claims shows that disrepair is becoming an ever diminishing isolated problem.

- b) That although the number of funded claims has fallen the average amount spent on each claim has increased by 19% over two years (from £1,771 in 2003/4 to £2,108 in 2005/6). This fact may illustrate SHLA's concern that public funding of disrepair cases can lead to costs-led litigation which can make it harder for claims to be settled for reasonable amounts. This is particularly a problem with claims worth less than £5,000 where the tenant may be advised that s/he has little to lose by rejecting an offer of under about £2,000, even where it is reasonable, because the nuisance value of a publicly funded case will frequently be at least £2,000. All publicly funded claims have a nuisance value because the other party knows that whether it wins or loses it will not be able to recover its costs from the LSC.
- c) The LSC seems to have no method of determining whether the £3 million that is makes available to tenants for bringing disrepair claims each year is spent reasonably. We say this because the LSC was unable to answer our question about the number of disrepair funded cases for which no charge was to be made to the LSC ie those cases which were won in the sense that the other side would be paying.

We would be pleased if you could confirm safe receipt of this letter and let us know what is likely to happen next regarding small claims allocation and disrepair cases. If convenient please email us at [info@shla.org.uk](mailto:info@shla.org.uk)

Yours sincerely,