Revised pre-action protocols

Two important protocols have been revised that apply to social housing providers with effect from 13 January 2020.

The previous disrepair pre action protocol has been replaced with a" housing conditions cases pre action protocol." This is designed to encompass the Homes (Fitness for Human Habitation) Act 2018 which applies to all tenancies regardless of start date from 20 March 2020. This new protocol does not apply in Wales.

The precedent letters have been updated removing reference to "repairs" and replacing it with "works". The letter of claim and instructions to an expert are slightly different to recognize the fact that the extent is now greater than purely disrepair and can include other items that were not previous covered until the new Act was passed e.g. damp arising from an inherent defect such as lack of mechanical extraction.

Interestingly, the actual test in s9A is not included in either the letter of claim or instructions to an expert precedent letters. It may be that the letters of claim are adapted to specifically refer to the test despite the ultimate decision being that for the court looking objectively at the evidence whether the dwelling is not fit for human habitation.

It is said (info obtained from Nearly Legal blog) that this protocol will be further revised in due course. As such, this may be a stop-gap until that work is concluded.

The pre action protocol for social housing possession cases has also been revised in very minor ways but should be read afresh now.

The major change is that part 3 places a greater onus on parties to ensure that where "cases where human rights, public law or equality law matters are or may be raised, the necessary information is before the Court at the first hearing." This is welcome news to housing providers who are often frustrated by the tenant raising issues at the first hearing of what should be a simple hearing where the court's discretion is removed (ie in mandatory grounds for possession cases) which result in several adjournments and increased costs. The court should be dealing with such cases on a summary basis at the first hearing (*Pinnock, Powell etc*) save for when

Equality Act issues are raised (*Akerman-Livingstone v Aster*). However, whether it is attaintable is a different matter. I think it is likely that the current situation of it being raised at the first hearing and adjourned for further information is likely to continue in practice to ensure tenants with potential proportionality defences are given a fair opportunity to raise them.

Part 3 is also clarified to confirm that it will apply to all cases where the court's discretion is removed and s89 Housing Act 1980 applies so it applies to mandatory possession claims and other cases where security of tenure has been lost – such as after service of a Notice to Quit. It does not (and never has) apply to long leases. I think most housing providers assumed this was the case, but the previous wording was less than clear. Housing providers must therefore ask for any personal circumstances that may be relevant prior to issuing proceedings.

In relation to rent claims, the housing provider should, at least 10 days before the hearing, disclose what it knows about the housing benefit or universal credit situation of the tenant. (para 2.12).

The changes to both protocols are relatively minor but should be noted and the right version of the protocol applied as there will continue to be challenges to landlords in applying the protocol and also to tenants who use the incorrect precedent letters. Also note that the housing conditions protocol may be updated again in the coming months.

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04/02/2020