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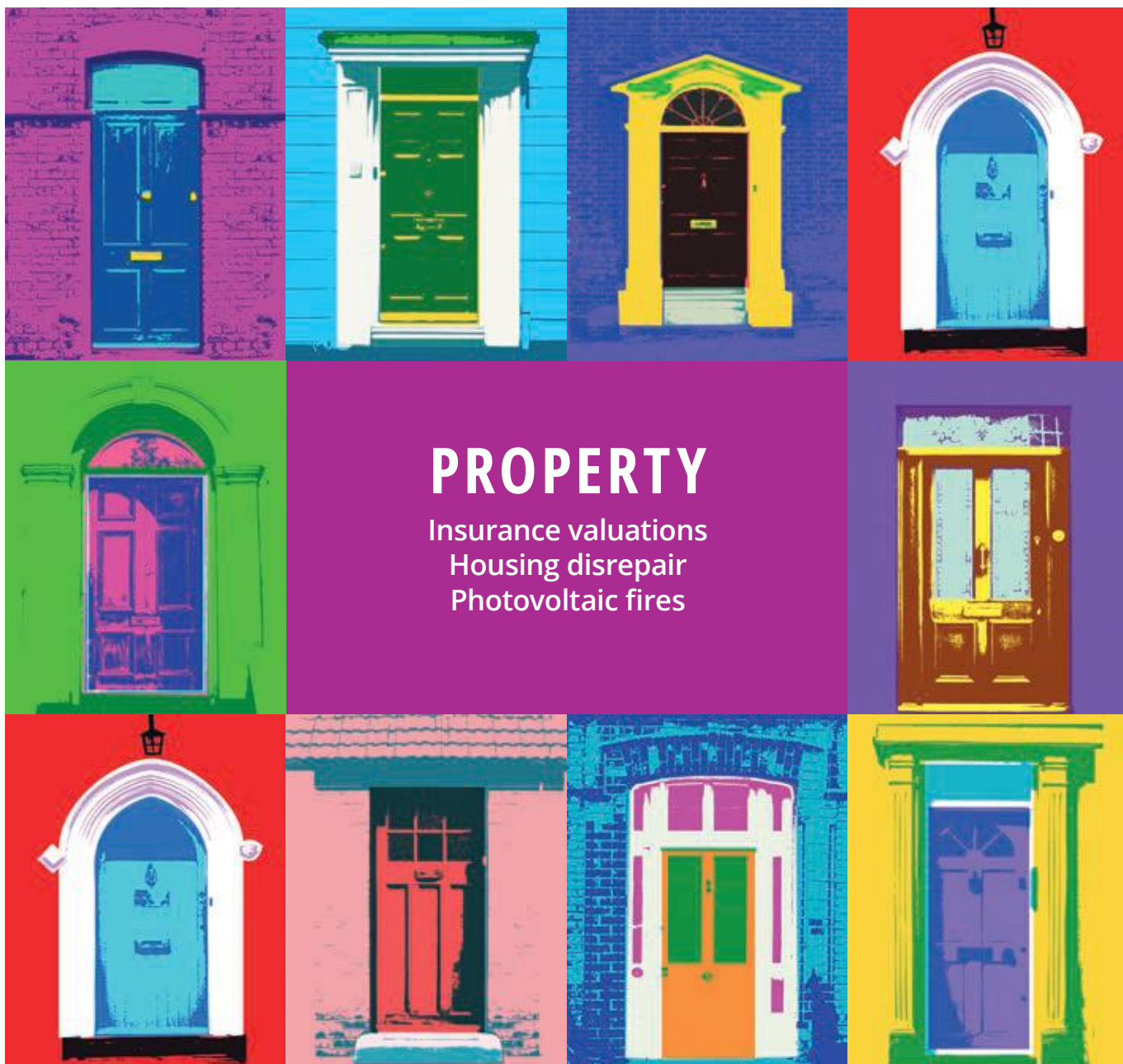
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Top tips on housing disrepair and claims during COVID-19

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Landlords have a duty to repair the structure and exterior of premises, which includes the supply of water, gas, electricity and sanitation where the landlord knows or ought to have known about the defect. Repairing obligations continued unchanged throughout lockdown and remain. Tenants should report repairs as early as possible so landlords can take appropriate action.

Disrepair claims will continue and as always, responding swiftly to them is critical. However, lockdown and an expected backlog of repairs presents challenges. Communication and cooperation between landlords and tenants is important, and should be documented to demonstrate reasons for any delays to inspect or repair.

Government advice to both landlords and tenants is to take a pragmatic, common-sense approach to resolving issues. This is likely to be the Courts' approach to claims where landlords have had difficulty carrying out repairs, balanced with the health and safety of tenants, housing officers and tradespersons, during the COVID-19 pandemic.

Practical considerations

During lockdown many councils and housing associations prioritised emergency repairs, namely those which may be prejudicial to health and/or presented an immediate risk. As such, routine repairs inside properties were cancelled, but external repairs, or those in communal areas could be completed where safe to do so. The Government's guidance for urgent repairs focused on those affecting a tenant's ability to live safely and maintain their mental and physical health in the home.

As tenants will have remained at home for longer during

lockdown, we expect to see an increase in claims for discomfort, inconvenience and distress of residing in a property in disrepair. A consideration for courts will be whether urgent repair was required and whether this has affected a tenant's mental health.

Any interim repair policy should be retained to demonstrate that reasoning has been given to any

change in standard policy, alongside the Government's guidance at that time. Landlords should be able to demonstrate they have considered each reported repair. Documenting on the house or tenancy file why a reported repair could not be carried out will assist in

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Once lockdown restrictions were eased, repairs could take place, unless the tenant was shielding or self-isolating. We expect there will be a backlog of routine repairs as landlords struggle to keep up with the volume of previous repairs in addition to new reports.

Essential work should still take priority and landlords are still expected to carry out safety checks when due (such as annual gas safety inspections and electrical installation inspections) unless the tenant is shielding or self-isolating.

Homes (Fitness for Human Habitation) Act 2018

In March 2019, the **Homes (Fitness for Human Habitation) Act 2018** (the *Act*) came into force to ensure rented houses and flats are fit for human habitation. They should be safe, healthy environments, free from causing serious harm. This standard was applied to tenancies predating the *Act*, from March 2020, which meant registered providers had this additional standard to meet during lockdown.

If a claim is brought under the *Act*, a court will question whether the property is unfit from human habitation. As with disrepair claims, the tenant must report any issues or concerns to the landlord, who then has a reasonable amount of time to investigate and carry out remedial work. What is a 'reasonable amount of time' will depend on the problem and how serious it is.

The previous duty to repair the structure and exterior of premises does not extend to a duty to ensure a property is free from hazard. This could mean landlords should carry out improvement works, which is beyond that previously required in a disrepair claim. However, there are similarities in duty in terms of the supply of water, gas, electricity and sanitation. The difference is whether a property is not reasonably suitable for occupation, due to one or more fitness criteria or hazards.

For example, this can include the layout of the property which could give rise to a risk of falls. It would also include food safety where there is a lack of facilities for the storage, preparation and cooking of food. It is important to consider fitness standards when carrying out a property inspection to ensure it remains fit for human habitation.

Government recommended guidance ensured new ways of working to help prevent further spread of the virus. This included communicating notice of visits to the tenant, and social distancing and hygiene protocols. ➤

The Pre-Action Protocol for Housing Conditions Claims (England)

The Pre-Action Protocol for Housing Conditions Claims (England) came into effect in January 2020, replacing many references within the protocol from housing disrepair to housing conditions. It is anticipated that 'fit for

habitation' will become a standard pleading within disrepair claims. The remedy is the same as a disrepair claim in that a tenant can apply for an order for specific performance requiring the landlord to reduce or remove

the unfitness and claim damages. The Act is still relatively new and until case law develops, it is expected that general damages for discomfort, distress and inconvenience are likely to be similar to disrepair claims.

Possession proceedings

Tenants may not have been able to work due to lockdown measures, self-isolation or shielding. Evictions have been paused due to the COVID-19 outbreak meaning landlords have been unable to recover accrual of rent arrears. Government changes to notice periods is providing tenants in rent arrears some short-term relief. For example, the *Section 21 Notice (Coronavirus Act 2020)* by the landlord seeking possession, must now give a tenant on an assured shorthold tenancy agreement (AST) a minimum of six months' notice, with three months thereafter if there is no vacant possession, before an eviction process can commence.

There is now a backlog, but the courts and landlords must be prepared for a wait if possession proceedings are pursued, once the pause has been lifted. Courts are likely to take a pragmatic view on these claims. As such, landlords need to consider the reason for any delay in rent payment and take a reasonable view to avoid any criticism from the court in taking possession proceedings.

Given the likely backlog of repairs, tenants may look to use the 'set-off defence' where there is a claim for housing disrepair. This is only relevant if repairs existed when possession proceedings commenced. However, tenants still need to demonstrate notice of the repairs and any repairs that have not been completed within a reasonable period of time.

Subsidence and tree roots

According to the Association of British Insurers showed that subsidence claims quadrupled in 2018, following the hot, dry summer. The UK experienced good weather at the start of lockdown (April was the second hottest April on record) so such claims could increase again. A council's inspection and maintenance of trees may have suffered a backlog following

lockdown when non-essential works were postponed. These issues combined could see an increase in subsidence or tree root damage to housing stock resulting in additional repairs.

Recent spells of hot weather may result in additional claims for subsidence and tree root damage, increasing the need for repairs and maintenance where there are already overstretched resources.

Allocation of resources in itself is unlikely to be a defence. However, in these extraordinary times, allocation of resources should be measured alongside other issues, such as a depleted workforce and supply chain delays for materials. The key to limiting any risk is to review Government guidance and policies at that time and evaluate any missed cyclical tree maintenance with a view to implementing a catch-up strategy.

Claims for housing disrepair are likely to rise following delays in repairs during the pandemic. Should a tenant litigate unnecessarily early, they may be criticised and penalised on costs, during a time of unprecedented difficulty for landlords in complying with repairing obligations. Preparation and maintenance of proper documentation is essential. ●

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