

# Disrepair: valuing a county court disrepair claim

**Robert Winspear**

# PART 1

## Legal principles

## General principle: diminution of value

- *Calabar Properties Ltd v Stitcher* [1984] 1 W.L.R 287
- *Wallace v Manchester City Council* [1998] EWCA Civ 1166
- “The object of awarding damages against a landlord for breach of his covenant to repair is not to punish the landlord but, so far as money can, to restore the tenant to the position he would have been in had there been no breach.”

## In occupation or not?

- In occupation: loss of comfort, loss of enjoyment and the inconvenience, disappointment and distress of having to live with the disrepair.
- Not in occupation: Interference with a property right as well as the stress and inconvenience of tolerating that interference.
  - Usually lower sum than if tenant in occupation (*Re Moorjani v Durban Estates* [2015] EWCA Civ 1252).

## PART 2

# Current methods of calculation

# Wallace v Manchester City Council

- Method 1: Global assessment
- Method 2: Notional reduction in rent
- Method 3: Combination of methods 1 and 2

# Method 1: global assessment

- Quantum reports
- Difficulties with like for like
- Inflation
- *English Churches v Shine* [2004] EWCA 434

## English Churches v Shine

- *“if an award for stress and inconvenience arising from a landlord’s breach of the implied covenant to repair is to exceed the level of the rental payable, clear reasons need to be given by the court for taking that course, and the facts of the case – notably the conduct of the landlord – must warrant such an award.”*



# Global assessment conclusions

- Useful to 'check your workings'
- Potentially helpful if acting for the tenant and there is a low rent

## Method 2: notional reduction in rent

- Use the actual/market rent for the period(s) of disrepair (may need to calculate an average rent)
- Payment of rent through HB / UC does not matter
- Tenant vs leaseholder
- Option 1: grouping disrepair into periods
- Option 2: applying % to each specific item of disrepair

# Option 1: grouping disrepair into periods

- Damp in one room between 2018-2019 = 5%
- Damp still not remedied until 2020, by which time mould has grown and it has affected more areas = 10%
- So: two periods of loss, 5% RR between 2018-2019, then 10% RR between 2019-2020

## Option 2: applying % to each specific item of disrepair

- 3 year claim period:
  - Defective intercom for entire period = 2%
  - Broken bath panel for 6 months = 1%
  - Leak for 1 month = 5%

# How to know what % to apply?

## Minor disrepair

- Wallpaper staining, broken shelf, minor isolated damp, broken intercom etc.
- 1 – 10%

# Major disrepair

- Accepted practice of dividing up the property into fractions
- 3 Bedroom house + living room + some uninhabitable rooms = (5) 20% fractions

# Option 1 or Option 2?



# PART 3

## Uplift and interest

## Uplift and interest

- Apply Simmons v Castle 10% uplift to the end figure
- Then apply 2% interest (calculated from mid-point of the loss)