

IN THE COUNTY COURT AT SOUTHEND

CLAIM NO: 397MC284

HHJ DUDDRIDGE SITTING IN THE COUNTY COURT AT SOUTHEND

**HANDED DOWN AT THE COUNTY COURT SITTING AT CHELMSFORD JUSTICE
CENTRE ON 15 JULY 2026**

B E T W E E N:

MISS NAZINE KEMP

Claimant

And

HENDERSON PROPERTY MANAGEMENT SOLUTIONS LTD

(T/A HENDERSON PROPERTIES)

First Defendant

KKWESTCLIFF SHOP LTD

Second Defendant

JUDGMENT

Introduction

1. For convenience, I shall refer to the Claimant as “C”, the First Defendant as “D1” and the Second Defendant as “D2”. I intend no disrespect by use of this shorthand.
2. D2 owns the freehold of 76 Fairfax Drive, Westcliff on Sea, SS0 9AF, a semi-detached three-bedroom house (“the Property”). On 22 March 2021, D2 granted a lease of the Property (the Lease) to D1 for a term of 3 years. On the same day, D1 granted an assured shorthold tenancy (“AST”) to C for a term of 12 months at a rent of £1,350 per calendar month. The property was made available to C through

arrangements made by Southend-on-Sea City Council (at that time, Borough Council) ("the Council") Housing Solutions Team.

3. C lived at the Property with up to 8 of her children (some of whom are adults and one of whom joined her part way through the tenancy) until 29 June 2024, when she was rehoused by the Council to enable D1 and D2 to arrange for repairs to be carried out.
4. It is C's case that the Property was in disrepair and unfit for habitation from the outset of her tenancy. The disrepair included damp and mould growth, defective windows and doors which did not close flush causing heat loss, and disrepair to pipework causing water and wastewater to leak, causing damage to the kitchen ceiling (part of which collapsed) and damp and ponding at the Property. She first gave notice of disrepair on 20 April 2021, when she sent photographs with Whatsapp messages to D1, complaining of dampness by bedroom windows. Between that complaint and June 2024, she made a number of further complaints of disrepair including damp and mould causing damage to her possessions, the heating system not working causing excessive cold, broken windows, the bathroom sink coming away from the wall and a leak from the bathroom damaging the kitchen ceiling.
5. On 12 April 2023, the Council served an improvement notice on each D, identifying a number of hazards and requiring them to carry out works. On 29 December 2023, the Council notified each D that they had failed to comply with the improvement notice.
6. On 29 June 2024, the Council moved C and her children to what was expected to be temporary accommodation whilst repairs were carried out. At that time, C was pregnant. However, C has not returned to the Property and is waiting for a suitable property to become available through the Council's allocations scheme.
7. C issued these proceedings on 18 April 2023. By her Re-amended Particulars of Claim dated 29 October 2024, she alleges that the disrepair made the Property uninhabitable for the duration of the tenancy, caused her and three of her children (one of whom is an adult) to suffer from chest infections and/ or asthma, damaged a number of her possessions, and caused financial losses in the form of travel expenses resulting from her being decanted to temporary accommodation distant

from her children's schools. She claims general damages against each D for discomfort, inconvenience and anxiety, personal injuries to her and the two children who were under eighteen, and special damages for the loss of her possessions, expenses she incurred replacing a tap, and travel expenses. However, although C's pleaded claims include a claim for damages for personal injury, she did not serve any medical reports with her Claim Form and has not done so during these proceedings. Ms Burzio therefore submitted that I should take the relevant personal injuries into account in assessing damages for discomfort, inconvenience and anxiety.

8. C brings her claim against D1 under the express and implied terms of the AST and in negligence. She brings her claim against D2 for breach of the statutory duty of care imposed by s.4 of the Defective Premises Act 1972 ("DPA 1972"). I shall discuss these causes of action in more detail below.
9. D1's pleaded defences are: (a) C did not comply with the pre-action protocol; (b) C settled her claims against D1 through the Property Redress Scheme on 4 May 2023; (c) it is denied that the matters C complains about amounted to breaches of D1's repairing obligations; (d) the Property was unsuitable for occupation by the number of occupants and this is likely to have caused or contributed to the disrepair; (e) C caused the disrepair due to lifestyle choices and causing or allowing poor ventilation.
10. D2 pleads the following in its defence: (a) there is no direct (contractual) relationship between D2 and C; (b) all defects referred to in the claim are relevant defects under DPA 1972; (c) D2 received notice of the defects on 12 April 2023; (d) any liability that D2 would have under s.4 DPA 1972 was discharged by enquiries made by D2 and assurances by D1 that works were being carried out.
11. In addition, D1 brought a counterclaim against C for alleged rent arrears and other expenses it said were caused by C's breaches of the AST. D1 and D2 brought Part 20 Claims (mis-described as counterclaims) against each other.
12. However, neither D complied with a direction for witness statements made by Recorder King on 29 July 2025. By an order drawn on 20 March 2026, DDJ Cooper debarred each D from relying on "any further evidence." At the PTR in April 2026, I held that D2 was permitted to rely on the witness statement of Mr Engel dated 1

March 2024; but that statement was made to support an application for relief from sanctions, not as evidence in chief to be given at trial, and contains little, if any, evidence of relevance to the various claims and cross-claims.

13. The result is that D1 was unable to rely on any evidence to contradict C's claim or prove its counterclaim against C or its Part 20 Claim against D2. D2 did not provide any evidence directly proving its Part 20 Claim against D1, albeit Mr Engel's statement said that he did not accept that he was liable to C and pursued a counterclaim against D1 for their default in rent payments and repairs.
14. The trial took place before me on 6 and 7 May 2026. Ms Christy Burzio of Counsel represented C; Ms Felicity Thomas of Counsel represented D2. I am grateful for their assistance. D1 did not attend and was not represented.

The Witness Evidence

15. I heard oral evidence from C, who had provided two detailed witness statements, and Mr Engel, whose evidence was limited for the reasons mentioned above.
16. Ms Thomas submitted that I should treat C's evidence with some caution, as there were discrepancies between her witness statements and oral evidence and she modified some of her evidence during cross-examination, sometimes changing her answers after the court had rephrased or clarified a question. In particular in her second statement, C said that her daughter Amya had suffered with asthma before coming to live with her at the Property but the conditions at the Property had exacerbated it whereas, in her oral evidence, she said Amya had not suffered with asthma before; there was also inconsistency in her evidence about who had passed Mr Engel off as a sub-contractor at a meeting on 24 March 2023. In respect of the latter, the inconsistency might be attributable to mistaken recollection due to the passage of time, and it is notable that Mr Engel said he could not remember whether he had said that he was a sub-contractor, which suggests it is the sort of thing he might have done. The inconsistency about Amya's asthma is difficult to explain as an error of recollection (because C presumably knows about her daughter's history in that respect) but, given that her witness statement said that Amya had asthma before she moved to the Property, and this is also shown by her

medical records (see below), I think it unlikely that C was deliberately trying to mislead when she said that she believed the conditions at the Property were the sole cause of Amya's asthma; she might have become convinced that that is the case over time and because of the nature of the alleged disrepair. Significantly, as set out below, the disrepair and conditions that she complains of are well evidenced in contemporaneous messages, photographs and other documents, so that her case does not depend mainly on her own evidence and recollection. In the light of the documentary evidence, and the absence of any witness evidence of substance from either D, I agree with Ms Burzio's submission that any inconsistencies in C's evidence were not significant in themselves and that she was generally a consistent and reliable witness.

17. Mr Engel gave only very limited evidence, for the reasons I have mentioned. The only explanation he could give for not providing a substantive witness statement was that he had not been involved in litigation before and was busy and pre-occupied with family and other matters. That is essentially the same as the explanation he gave in his witness statement supporting his application for relief from sanctions. Those are not good reasons for failing to comply with the Court's direction to file a witness statement or apply for an extension of time if unforeseen problems prevented him from filing it on time, particularly after D2 had already been granted relief from sanctions following earlier breaches. The consequence is that he has been unable to give more than limited evidence in support of D2's case. In general, he struck me as being rather ill at ease, which is natural under the circumstances, and I found his answer that he could not remember whether he had posed as a sub-contractor surprising. Unsurprisingly, his evidence was of limited value but, as discussed in more detail below, he denied that he had been aware of the condition of the Property before March 2023. There is no evidence to contradict that denial and, as set out below, I am not prepared to infer that he was aware of its condition earlier than that date simply on the basis of D2's failure to comply with directions.

The terms of the Lease and the AST

18. D1 advertises its services on its website under the strapline “Guaranteed Rent. Zero Hassle. Peace of Mind.” The description of its services includes the following statements:

“One of the most frustrating things about owning property is when it does not generate the expected income. This may be through void periods of rent arrears. We offer Guaranteed Rent at [D1].”

“[D1] will become your tenant with a lease for a minimum term of 36 months. We will sublet the property to an approved tenant. It is of course in both our interests to ensure we have good quality tenants. We may be able to keep on your current tenants if approved, but they will be subject to further checks and Right to Rent regulations (All at our cost).”

19. The Lease and the AST therefore followed that advertised model, whereby D1 would become D2’s tenant and would sublet the Property to a tenant.

20. The following terms of the Lease are relevant:

Clause 1 included definitions of “The Main Structure” and “The Interior of the Property”

“The Main Structure” was defined as “...the roof foundations, load bearing walls, joists, beams, external walls, fences, all windows, window frames, window cills and glass in the windows. External drains and external surfaces of the property, and any cisterns, tanks, sewers, drains, pipes, wires, ducts, circuits and other conduits serving the property alone or in common with other property any water, gas, electricity, space heating, central heating or sanitation system in the property either serving the property alone or in common with other property and without prejudice to the generality of the forgoing any thing not comprised in the interior of the property.”

“The Interior of the Property” was defined as “...the internal doors, internal surfaces of the window frames. Interior surfaces of the ceilings, floors, main structural and/ or internal walls of the property.”

By **Clause 5** D1 covenanted “To keep the interior of the property in a reasonable standard and to carry out any necessary repairs in order to comply with current legislation and requirements. PROVIDED ALWAYS and

for the avoidance of doubt the Lessee shall not be responsible for carrying out any repairs to the main structure and that wear and tear is expected¹ as is any major breakdown to the heating/ hot water system. Henderson Property will return the property to the landlord/ owner in the condition it was in at the beginning of this contract, with the exception of standard wear and tear.”

By **Clause 5.2** D1 agreed “To permit the Landlord and its authorised agents, mortgagees, and others within the Landlord’s authority having given not less than 5 working days’ notice in writing, (except in a case of emergency) to enter the property to examine its state and condition and to repair or redecorate the main structure.”

By **Clause 5.8** D2 was required to indemnify D1 “from and against all and any loss, damage, cost, expense, liability, claims and proceedings whatsoever in respect of any personal injury or death of any person whatsoever and any loss or damage to any property whatsoever arising under, out of or in the course of or in connection with any neglect, error, act or omission by the landlord/ owner or any of its employees, agents or representatives.”

Clause 5.9 provided “The tenant HP, will inspect the property 3 monthly for the duration of the term.”

Clause 6.2 required D1 “To inform the Landlord of any repairs that are deemed as necessary, and/ or have been reported to the Lessee or local authority by the occupant/s.”

Clause 6.3 required D1 “To attempt to contact the Landlord by telephone/ email to inform of repairs, failure of which may result in works being undertaken if of a nature which may prove detrimental to the occupants comfort and wellbeing, or may result in further damage to the property or adjoining properties, without prior consent by the Landlord, and to recharge any works accordingly.”

By **Clause 7.3** D2 covenanted “To put and keep or procure that the property is put and kept in good and decorative repair and condition and specifically:

7.3.1 The main structure and exterior of the property. All installations for space heating, central heating, water heating and sanitation and for the supply and use of water, gas, and electricity to or in the property. Any parts of the building of which the property forms part of the property.”

¹ Sic. It appears from the context that this should read “excepted”.

Clause 7.4 provided “Henderson Property will not replace any fixtures and fittings, these items to be written off during the period of the lease. This to include fitted items such as kitchen units, boilers, fitted wardrobes and bathrooms installed at the property prior and during the period of such lease agreement.”

Clause 7.8 required D2 “To procure that the electrical and gas installations in the property and the building is tested by a NICEIC approved electrician and GAS SAFE registered engineer and declared safe as often as is necessary to comply with any regulations in respect of such installations. To procure that any works necessary to bring such installations up to the required standard are carried out as soon as possible and to provide the Lessee with certificates issued by such engineers that such installations are satisfactory. The Landlord to undertake to provide to the Lessee a current copy of a Landlords Gas Safety certificate and an N.I.C.E.I.C. Electrical certificate for the premises at the commencement of the term ... Where no such certificates are provided, the Lessee will provide the said certificates and recover the cost in full from the Landlord by deducting the cost from the rent due. Subject to the landlord not resolving the issue.”

Clause 8.1 provided “Any works carried out by or at the request of the Landlord must be carried out by a person competent to do so and be carried out to the satisfaction of both parties.”

Clause 8.6 provided “Henderson Property will carry out any repairs not carried out by the landlord/ owner and invoice the landlord/ owner accordingly. Subject to the landlord not responding or completing works.”

21. The above provisions of the Lease are not well-drafted and, as a result, some are hard to interpret. However, it is clear enough that: (a) D2 had the primary obligation to carry out repairs to the “Main Structure” as defined by the Lease, which included those matters falling within s.11 of the Landlord and Tenant Act 1985 (“LATA 1985”) (cl. 7.3); (b) D1 had the primary obligation to keep the Interior in good condition and repair, subject to ordinary wear and tear and other exceptions (cl. 5 and 7.4); (c) D2 had the right to enter for the purpose of inspecting or carrying out repairs to the Main Structure (cl. 5.2); (d) D1 had obligations to inspect and inform D2 of any repairs falling within D2’s covenant (cl.5.9, 6.2, and possibly

6.3²); (e) D1 had the right to carry out repairs falling within D2's obligations and to recharge D2 if D2 did not do them (cl. 8.6); (f) D2 was required to indemnify D1 in respect of claims arising from neglect, error, act or omissions by D2 or its employees, agents or representatives.

22. Clause 10 of the AST provided that D1 agreed to carry out the repairing obligations implied by s.11 of LATA 1985, which are as follows:

- a. To keep in repair the structure and exterior of the Property (including drains, gutters and external pipes);
- b. To keep in repair and proper working order the installations in the Property for supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences but not other fixtures, fittings and appliances for making use of the supply of water gas or electricity); and
- c. To keep in repair and proper working order the installations in the property for space heating and heating water.

23. The effect of the arrangements between the parties was therefore that: (a) under the AST, D1 owed C the repairing obligations imposed under the covenants implied by s.11 LATA 1985; but (b) D2 owed equivalent repairing obligations to D1 under the terms of the Lease. As C was not in a contractual relationship with D2, she was unable to enforce D2's repairing covenants or sue under them. Her claim in contract lies against D1. D1 is liable to C for any failure to perform its repairing obligations but is entitled to be indemnified by D2 if C's claim arises from any breach by D2 of its repairing covenants.

24. In addition to those covenants, by s.9A (1) of LATA 1985 the AST contained an implied covenant by D1, that the Property was fit for human habitation when the AST was granted and would remain so during the term of tenancy, subject to the qualifications in subsections (2) and (3). In particular, subsection 2 (e) provides that the covenant does not require the lessor to carry out works requiring the

² Clause 6.3 does not make literal sense and so its meaning is obscure: its purpose appears to be to require D1 to attempt to notify D2 by telephone or email before carrying out certain kinds of works and recharging them.

consent of a superior landlord or other third party where consent had not been obtained following reasonable endeavours to obtain it; and subsection (3) (a) provides that the implied covenant is not to be taken as imposing liability on the lessor for unfitness wholly or mainly attributable to the lessee's own breach of covenant. Section 10 sets out a list of matters to be taken into account in determining whether a house or dwelling is unfit for human habitation, stating that it shall be regarded as unfit for human habitation if, and only if, it is so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition. The following matters amongst those listed appear most relevant in this case: repair, freedom from damp, internal arrangement, ventilation, water supply, drainage and sanitary conveniences, facilities for the preparation and cooking of food and for the disposal of wastewater, and any hazard prescribed in regulations made under s.2 of the Housing Act 2004.

25. As well as the above express and implied terms of the Lease and the AST, s.4 (1) of the Defective Premises Act 1972 imposed a statutory duty of care on D1 and D2. That section provides as follows:

“Where premises are let under a tenancy which puts on the landlord an obligation to the tenant for maintenance or repair of the premises, the landlord owes to all persons who might reasonably be expected to be affected by defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a relevant defect.”

Subsection (2) provides that the duty is owed if the landlord knows (whether as a result of being notified by the tenant or otherwise) or if he ought in all the circumstances to have known of the relevant defect. Subsection (3) defines a “relevant defect” as meaning a defect which constitutes a failure by the landlord to carry out his obligation to the tenant to maintain or repair the premises or would do so if he had notice of the defect. It follows that a landlord will only be liable under this section in respect of a defect if it falls within his repairing covenants. However, D2 has averred in its Defence that all defects relied on by C are relevant defects.

26. That statutory duty was imposed on both D1 and D2, as each was subject to landlord's repairing obligations under the AST and the Lease respectively. However, C brings a claim for breach of this duty of care against D2 only, needing to rely on the statutory duty because she was not in a contractual relationship with D2. An issue I shall address later in this judgment is whether, as Ms Burzio submitted, damages under s.4 can include damages for discomfort, inconvenience and distress caused by the disrepair.

Relevant Background

27. C's witness statements and Ms Burzio's skeleton argument contain detailed chronologies of C's complaints about disrepair to D1 and, eventually, to the environmental health team at the Council and directly to Mr Engel, and Ds' responses to those complaints. C's complaints were generally made by Whatsapp messages accompanied by photographs showing, for example, damp and mould affecting the walls, leaks causing water staining and other damage to the kitchen ceiling, a broken tap, and damp and mould causing damage to clothing and other personal possessions. C has also provided five video recordings, which I have watched, showing water leaking through the kitchen ceiling, damage to the ceiling including, at its worst, that part of it had collapsed exposing the joists above, and a loose external window frame which could be displaced by hand.

28. C's reports of disrepair and the nature of the disrepair she alleges are therefore well-evidenced by the contemporaneous documents.

29. It is not necessary for me to repeat the chronologies in C's statements and Ms Burzio's skeleton arguments in the same detail in this judgment. In summary, they show that, before involving the environmental health team:

- a. C reported dampness by the bedroom windows and a broken window in one of the bedrooms on 20 April 2021, within a month of moving into the Property. After that, she made repeated complaints about damp and mould, including with photographs showing that it was causing damage to the household's clothing and other possessions. In December 2022, she complained that her daughter Amya had attended hospital with a

respiratory condition caused by the damp, and that she believed it had also caused C and her daughters Javalia and Takeele (who was already an adult) to suffer infections.

b. On 28 June 2021, C reported to the Council that the bathroom sink was coming away from the wall and could be causing leaking through the kitchen ceiling. On 2 July 2021, she notified D1 of a leak in the bathroom that was leaking through the kitchen ceiling. On 22 March 2022, she informed D1 that she had employed a plasterer to redo the ceiling. On 9 May 2022 and 26 May 2022, she sent D1 photographs of a broken kitchen tap. On 20 and 22 March 2023, she sent D1 photographs of the kitchen ceiling that had collapsed.

c. On 18 September 2021, C reported to D1 that the heating system was broken. On 16 November 2021, she reported the broken window.

30. Despite C's reports, effective repairs were not carried out before the Council served the Improvement Notice. According to C's first statement, on occasions D1's employees said they would send someone to carry out repairs, but this was not done promptly or at all. On 7 December 2022, C informed D1 that she had spoken to the Council, who had told her to escalate the disrepair to the environmental health team, but the employee of D1 she spoke to later messaged her asking her to hold off sending documents to the Council, with further assurances that D1 would resolve the problems. According to C's second statement, she kept chasing D1 to arrange repairs, but Mr Henderson told her that the landlord was not willing to do them and nothing was done. In her oral evidence, she said he told her that the landlord would not give permission to carry out the works. During that period, she did not realise that D1 was her landlord under the AST because Mr Henderson presented D1 as letting agents. She therefore thought that it was the landlord, rather than D1, that was preventing work from being done. This is supported by the Whatsapp messages between C and D1's employees, a number which imply that the landlord was a third party and D1 was an agent. In a message as late as 18 July 2023 Mr Henderson was referring to the landlord as a different person from D1. C said she had asked Mr Henderson for D2's contact details, but he refused to give them to her.

31. After the kitchen ceiling collapsed in March 2023, C reported matters to the environmental health team.
32. C also made a complaint about D1 to the Property Redress Scheme. On 21 April 2023, they upheld her complaint and recommended that D1 pay £2000 in compensation. C and D1 accepted that recommendation.
33. According to C's second witness statement, Paul Oatt from the environmental health team inspected the Property on 10 March 2023. It appears from emails in the trial bundle that, before doing so, he wrote to D2 stating that he wished to arrange access. Mr Engel responded by email on 10 March 2023, in which he stated *"From the letter you seem to imply that there might be hazards in the property? If that's the case can you please enlighten me with the details ... As pre to March 21 the property had a full refurbishment done and since I haven't heard any concerns in regards to the property."*
34. According to C's second statement, on 24 March 2023, Mr Henderson attended the Property with another man, who he identified as a sub-contractor. In her oral evidence she said it was an employee called Kerry who had attended with the sub-contractor. However, she discovered at a further meeting in August 2023 that the other man was in fact Mr Engel. In her oral evidence, she said both that it was Mr Engel, and that it was Mr Henderson, who had introduced Mr Engel as a sub-contractor at the meeting in March. In his oral evidence, Mr Engel said that he could not remember whether he had done that or not.
35. As set out above, the Council served the Improvement Notice on each D on 12 April 2023. In summary, Schedule 1 identified the following hazards:
- a. Damp and Mould Band C Category One, referring to mould growth on cold facing walls, windows and within cupboards, evidence of damp penetration from an old leak, and UPVC windows and doors in disrepair.
 - b. Excess Cold Band C Category One, referring to disrepair to the UPVC doors and windows including loose seals and damage to glass, poor insulation to the envelope of the building due to solid rather than cavity walls and poor loft insulation.
 - c. Personal Hygiene, Sanitation and Drainage Band E Category Two, referring to large ponding of grey wastewater possibly due to a leak from the sink

waste pipe routed round the rear and flank elevations to the back addition to the Property.

- d. Electrical Hazards Band D Category Two, referring to a face plate to a temperature control unit which had been removed exposing a live wire, albeit positioned at height and not a danger to young children.
- e. Fire Safety Band C Category One, referring to the lack of smoke detection on the ground floor.

36. Schedule 2 of the Improvement Notice set out the remedial works that D were required to carry out by 13 May 2023. I need not list those remedial works in detail in this judgment but they included requirements to provide adequate opening windows to provide ventilation, suitable damp-proofing, mechanical ventilation in the kitchen and bathroom, to overhaul, repair and renew the windows and for any casement window to have an openable area, to renew all cracked and broken glazing and reseal the windows, to investigate and remedy the loft insulation, and to remove and replace the defective wastepipe, to install a smoke detection system that complied with relevant regulations and to renew the thermostat control on the ground floor.
37. It appears that Ds' reaction to being served with the Improvement Notice was to attempt to arrange to serve C with a notice requiring possession under s.21 of the Housing Act 1988. This led Mr Oatt to write to D2 on 19 May 2023 advising them of the offences of unlawful eviction and harassment, and that they could not give a valid s.21 notice within 6 months after the Improvement Notice was served.
38. D did not comply with the Improvement Notice. Following a meeting between Mr Oatt, Mr Henderson, Mr Engel and C on 18 August 2023 (which is the meeting mentioned above, when C discovered Mr Engel's true identity), the date for compliance was revised to 12 December 2023. Although some works were carried out, they were not completed because, on 29 December 2023, the Council served a notice of intention to prosecute for non-compliance with the Improvement Notice.
39. According to C's witness statements and the contemporaneous messages, she continued to make complaints of disrepair to D1 after the Improvement Notice, including, for example: slugs on internal walls (15 June 2023); holes in the roof and

faulty carbon monoxide monitors (18 July, 20 July 2023); the shower leaking, and a broken tap (20 and 30 July 2023, the leak was reported again on 6 November and 26 November 2023); the loft still in disrepair (19 August 2023); mould in the property (3 September 2023); a leak in the kitchen (11 September 2023), and a hole in the ceiling (27 September 2023); the leak and the kitchen ceiling collapsing (7, 8, 21, 27 and 30 October 2023, 13 February 2024); the shower not working (21 October and 4 November 2023); the window coming away from the wall (6 November 2023); the fence fallen down and rubbish in the garden (21 January 2024); mould in the bedroom (20 February 2024); blown plaster (15 March 2024); damage to possessions caused by damp and mould (16 March, 5 May, 10 May, 22 May and 7 June 2024); excessive cold and struggling to pay the gas bill (7 May 2024).

40. At some point C managed to obtain Mr Engel's mobile phone number but, in oral evidence, she said she could not remember how. She said that she had sent him a message asking him to help to get the repairs done when she was on holiday in Spain in about June 2023, but he did not respond. She has exhibited to her first statement a number of messages she sent to Mr Engel in July, August, September and October 2023 attaching photographs of the disrepair at the Property.
41. C's pleaded case is that D2 was made aware of the disrepair by no later than 12 April 2023. D2's pleaded case is that it received notice of the defects on that date. D1's claim against D2 does not set out when it informed D2 of the disrepair and asked it to carry out repairs. The earliest documentary evidence showing that D2 was on enquiry about the disrepair is Mr Engel's email to Mr Oatt dated 10 March 2023, referred to at paragraph 33 above. D1 disclosed a number of Whatsapp messages between Mr Henderson and Mr Engel between 23 March 2023 and 24 January 2024. In oral evidence, Mr Engel accepted that D2 had not disclosed those messages. He said he did not have copies of them because he had deleted them. He said he had communicated little with Mr Henderson about the Property before March 2023 and that their communications had started when the Council had contacted him. He denied that earlier messages would have shown that he knew about the disrepair before that, or that that was the reason why he had failed to disclose them.

42. Those messages contain discussions about carrying out repairs to the Property as well as other matters, including rent arrears, possible financial settlement with C and terms on which she might be persuaded to vacate the Property. The most relevant exchanges include:

- a. On 23 March 2023, Mr Henderson referred to *“going through the report ... to knock back as much of the comments as we can”* – specifically stating *“For example, the leak from the bathroom. We do not feel there is a leak that could create that much damage, we feel it is the way the 7 children are being washed.”*
- b. On 20 July 2023, Mr Henderson sent photographs showing holes in the roof, which he suggested could be a cause of dampness and mould. In a series of messages, Mr Engel asked him to go ahead and do the works, and to send some money for the rent. He also said he needed C out “ASAP” and that she had called him and been to his house.
- c. A number of messages in August refer to Mr Engel sending a solicitor called Mr Allie to the Property, which is consistent with C’s evidence that a former solicitor of that name (who had been struck off) came to the Property unannounced. There are also references to the action being taken by the Council under the Improvement Notice, and to possible settlement with C.
- d. On 21 August 2023, Mr Engel said he needed the works to be done and asked for information about the cost. Mr Henderson said he was still obtaining quotes but had dates booked in. Later that day, Mr Engel asked Mr Henderson to get the window fixed that week. There was also discussion about the works required to address fire safety and electrical works to the kitchen. On 23 August 2023, they exchanged further messages which suggest that progress was being made with repairing the fence and altering a window.
- e. On 1 September 2023, Mr Henderson informed Mr Engel that a preservation specialist, Clarkes Preservation, had visited the previous day and he was expecting to receive a quote that day. He sent the quote to Mr Engel on 5 September 2023 and said that Clarkes Preservation were booked in on 18 September 2023. Messages on that date show that Clarkes

Preservation were working at the Property. On 19 September, Mr Henderson asked Mr Engel to send him some money for the preservation works and the roof. In a later message that day, he said Clarke's Preservation had told him that their works should have resolved the damp issues. On 20 September 2023, Mr Engel said he was "*really tight at the moment*". On 21 September Mr Henderson sent Mr Engel several pictures showing the hole in the kitchen ceiling caused by the leak in the bathroom. In late September and early October, he sent a number of requests for money to pay the roofer.

- f. On 5 October 2023, Mr Henderson asked Mr Engel to sign off on the quote for the window, and Mr Engel told him to go ahead. On 6 October, Mr Henderson said the whole bathroom needed to be replaced. The exchanges during October show that there was a hearing in these proceedings on 18 October. It appears Mr Henderson did not attend and said he was not given access by the court due to an admin error. During the messages exchanged on that day, Mr Engel said that C was not his tenant. Mr Henderson said, "*She isn't your tenant, but our lease stipulates that you are responsible for maintaining the property and you know that.*" On 22 October, Mr Henderson sent some pictures (which have not been reproduced) and Mr Engel replied the following day "*Can we fix it asap*". He asked what was left to be fixed and Mr Henderson said, "*This is the bathroom that I've tried to talk to you about several times.*" Mr Engel asked to inspect the full house in C's absence, so that he could get it fixed and Mr Henderson responded, "*We are getting it fixed*". On 29 October, Mr Engel reiterated, "*We need to finish the works*". On 31 October, Mr Henderson said he was chasing quotes for the bathroom and getting the fire door done.
- g. On 13 November, Mr Henderson informed Mr Engel that he was having the bathroom done on Friday, but the contractor had asked for funds up front to pay for materials. He also said the roof was still leaking and the roofer had asked for a further £450 for the additional works involved. On 14 November, he said that he was working on resolving Mr Engel's problems, but not getting anything back. He chased him again on 15 and 24 November

and informed him that he needed some funds on the account and had paid the roofer and bathroom fitter. On 27 November, Mr Engel asked whether the bathroom was sorted and asked for a full statement and copies of the work. Mr Henderson confirmed that the bathroom was sorted. Mr Engel asked whether the windows and door were sorted and said, *“We need to get it sorted not much time left”*. Mr Henderson responded, *“You need to stop ignoring me”* because he had done nothing but help him. He then sent a series of messages referring to money for works, settling with C and replacement of goods.

- h. On 5 December, Mr Henderson confirmed that the ceiling and fire door were being done on Saturday. Mr Engel asked about the windows. Mr Henderson said, *“Not doing it because you don’t pay”*. Mr Engel said, *“Waiting for this statement ages”* and Mr Henderson responded, *“Waiting for call back and have been fighting your case for ages”*. On 11 December, Mr Henderson said, *“I really need a response from you and yet again I am [not] hearing anything from you”*³. He sent D1’s bank account details and asked Mr Engel to confirm when he had made payment. On 19 December he chased Mr Engel for payment again and referred to having saved Mr Engel from a £50,000 fine. They continued to exchange messages on that day about payment for the works and settlement terms with C. During that exchange, Mr Engel said, *“I wish I would have £1700 lying around”* (which appears from the surrounding messages to be a reference to the sum C had asked for to replace her possessions) and *“Everything is tight now”*. After some messages about organising a skip to remove rubbish from the property, on 29 December 2023, Mr Henderson contacted Mr Engel who answered, *“Anything urgent”*. Mr Henderson replied, *“Settlement, replacement of goods, fine coming your way”*. The context for that comment appears to be Council’s notice of intention to prosecute, which it sent by email that day. Mr Engel responded, *“Thanks for the fine”*. Mr

³ It appears from the context that the message should contain the word “not” which I have inserted in square brackets.

Henderson said, *“Not from me sir”* and *“I’ve continuously tried to help you.”*

During January 2024, the messages petered out. The final message is from Mr Henderson to Mr Engel, *“I seriously need you to communicate with me.”*

43. Those messages have to be interpreted without the benefit of any witness statement from D1 or D2 explaining them and giving their full context. Whilst they show that, after the Improvement Notice was served, Mr Henderson and Mr Engel were taking steps to arrange the works required by the Notice, progress was very slow as compared with the deadline of 13 May 2023 originally set by Notice. Although the messages show that Mr Engel asked Mr Henderson to have the repairs done on a number of occasions, it also appears that Mr Engel had cash flow problems, did not put D1 in funds, and did not respond promptly to requests that he contact Mr Henderson to give instructions or to put D1 in funds. This was an obvious source of tension between them, particularly towards the end of the messages as the extended deadline for completing the works passed and the Council served notice of intended prosecution. At the start of the trial, I was given some further documents including a number of invoices and reports from Clarkes Preservation between 28 March 2023 and 16 May 2024, which show that they inspected and carried out works to the Property. But it is clear from the chronology summarised above that C’s complaints, including amongst other things about damp and mould, continued until June 2024.

44. As set out above, on 29 June 2024, the Council arranged to move C and her children to alternative accommodation, which she understood was to be made available temporarily while repairs were being completed. C did not remove the belongings stored in the loft because she was expecting to return to the Property. On 7 September 2024, Mr Henderson informed her that the Property had been broken into and they had changed the locks. He arranged for one of D1’s employees to give her access to retrieve her remaining belongings. That employee advised her that the Property would be ready to re-let by October but if C wanted to return it would be at a higher rent. Her primary school age children attended a school within walking distance from the Property but, as a result of being decanted, she had to take them to school by bus. In about October 2024, she

noticed another family in occupation at the Property and assumed it had been re-let to them.

The Disrepair

45. As I have set out above, the defects that are the subject of this claim are well evidenced in the contemporaneous documents including C's messages and photographs, the Improvement Notice, and the messages between D1 and D2, and it is clear that there were defects throughout the tenancy until C was moved by the Council.
46. However, as Ms Thomas submitted in her skeleton argument, disrepair is the converse of repair and requires deterioration from a previous physical condition and damage to the subject matter of the covenant: see Woodfall 13-029.
47. The burden is on C to prove that those defects were attributable to disrepair falling within the covenants implied by s.11 of LATA 1985. That remains the case even though neither D has provided any substantive evidence as to their cause.
48. It is usual in disrepair cases for the parties to rely on expert evidence from a surveyor to identify defects in the property and show whether they are attributable to disrepair, but the parties have not obtained any such expert reports in this case. It appears that no direction for such expert evidence was made in these proceedings. In her skeleton argument, Ms Burzio pointed out that C was unable to obtain such a report, because D1 carried out works shortly after she was rehoused, which prevented her from obtaining a report. Hence, she relied on the contents of the Improvement Notices as evidence of the disrepair.
49. Even without such expert evidence, it is clear that a number of the matters that C complained about, and shown in the photographs were disrepair falling within D1's implied repairing covenants, including the leak in the bathroom that caused water to leak into the kitchen and the kitchen ceiling to collapse, the loose window frame that could be moved by hand, broken glass and the poor seals to the windows, the leaking wastewater pipe causing ponding, the holes in the roof, broken taps, and the heating system not working.

50. However, it is more difficult to show the cause of the damp, mould and excess cold without expert evidence, because it is not self-evident that they were caused by disrepair. For example, it is well known that moisture, damp and mould may be caused by condensation rather than by disrepair to the structure and exterior falling with s. 11 of the 1985 Act. Condensation may be attributable to the manner of occupation of the property, such as a combination of the number of occupants, the use of central heating, cooking without extraction, lack of ventilation and drying clothes indoors, and/ or to inherent structural features such as cold external walls that do not have cavity insulation. Excess cold might be explained by the lack of cavity insulation.
51. As set out above, D1's pleaded case includes an allegation that the manner in which C occupied the Property caused or contributed to the disrepair, but neither D has provided any witness evidence to show that that was the case. In the absence of such evidence, I do not accept the allegation that C was responsible for the condition of the Property.
52. However, the documentary evidence shows that some of the features referred to in paragraph 50 were present. The Property was occupied by up to nine people and the Improvement Notice shows that it had single skin external walls without cavity insulation. A report from Clarke Preservation dated 4 April 2023 stated that they found condensation to be the problem and referred to poor mechanical ventilation, and also that the property was overcrowded with one adult and 8 children in residence. A further report from them dated 16 May 2024 referred to the property being overcrowded and cluttered, preventing airflow and not allowing the Remcon (dehumidifier) to work efficiently and suggested that, if walls were cluttered, mould would form as moisture cannot dry out. This raises the possibility that condensation was a factor in the damp and mould growth.
53. On the other hand, there is evidence suggesting, on the balance of probabilities, that even if condensation was a factor, structural disrepair was a material cause of the damp, mould and cold conditions. The Improvement Notice required installation of suitable damp-proofing. A report by Clarke Preservation refers to a leaking gutter to the front of the Property which required repair to prevent further damage. A further report dated 1 September 2023 stated that the render to the

front elevation was in poor condition and should be re-rendered to prevent penetrating damp. Even allowing for the inherent lack of cavity insulation to the external walls, the holes in the roof, defective loft insulation, broken and poorly sealed windows and the window that was not properly fixed, are likely to have made a material contribution to the cold conditions at the Property, which is likely to have contributed in turn to condensation, and therefore to the damp and mould, even if they were attributable to condensation.

54. D2's Defence positively avers that the defects relied on by C are "relevant defects" under s.4 of DPA 1972. Given the definition of "relevant defects" (see paragraph 25 above) it is necessarily implicit that those defects, including the damp, mould and cold conditions, fell within the scope of D2's repairing obligations in the Lease and it is therefore not open to D2 to argue otherwise.
55. For those reasons I am satisfied, on the balance of probabilities, that all of the defects fell within D1's implied repairing covenants notwithstanding the lack of expert evidence on the issue.
56. Even if my finding that the damp, mould and excess cold were caused by disrepair is incorrect, it is clear from the way that fitness for habitation is addressed by s.9A of LATA 1985 that a house may be unfit for habitation as a result of damp, mould and excess cold, amongst other things, even if they are not attributable to breaches of the landlord's implied repairing covenants. In my judgment, the fact that the Improvement Notice listed Damp and Mould, Excess Cold and Fire Safety as Category One Hazards is evidence of their severity. Taking that into account together with C's evidence and the photographs and videos, I am satisfied that the Property was unfit for habitation due to the damp, mould and excessive coldness.

The Claim against D1

57. Where disrepair arises within the property demised to the tenant, the landlord will not be in breach of their repairing obligations until the disrepair has come to their notice and they have had a reasonable opportunity to carry out repairs. There is no issue in this case about whether D1 was on notice of the disrepair because the contemporaneous messages show that C promptly and repeatedly informed D1

of the defects in the Property. I am satisfied that D1 failed to carry out or complete effective repairs promptly, with the result that the Property was in a state of disrepair throughout the tenancy. Although D1 made assurances that it would carry out the works, and did arrange for its employees to do minor works, it did not resolve the issues but fobbed C off with the excuse that it was “the landlord” that was holding things up. It was not until after C involved the environmental health team and they served the Improvement Notice that D1 began to take action to resolve the more serious issues, although the Whatsapp messages referred to above show that Mr Henderson’s initial reaction was to try to “knock back” the works identified in the Improvement Notice. The evidence shows that, whilst some works were carried out, the repairs had not been completed more than a year later when C moved out. It was only after she had moved out that further repairs were done.

58. I am therefore satisfied that D1 was in breach of the repairing covenants implied by s.11 of LATA 1985 and in breach of the further implied covenant as to fitness for habitation under s.9A of the Act.

59. As I have set out above, I do not accept D1’s defence that C’s lifestyle choices, manner of occupation or the number of occupants caused the disrepair. Its other defences are that C failed to comply with the Pre-Action Protocol and settled her claim against D1 through the Property Redress Scheme for £2000. I agree with Ms Burzio’s submission, in her skeleton argument, that failure to comply with the Pre-Action Protocol does not provide a substantive defence to the Claim – albeit it might have procedural or costs consequences. So far as the settlement is concerned, I also agree that the Property Redress Scheme exists to resolve disputes between tenants and letting agents, rather than between tenants and landlords. The settlement through the Scheme was therefore founded on C’s mistaken understanding, fostered by D1, that D1 was a letting agent rather than her landlord. As C was a party to the AST, she should have known that D1 was her landlord, but the evidence shows that D1’s employees actively and repeatedly encouraged her to believe that it was not her landlord and was only acting as a letting agent and thereby misrepresented the position to her. In those circumstances, I agree with Ms Burzio’s submission that the settlement is liable

to be rescinded for misrepresentation, subject to C giving credit for the £2,000 she received. An alternative view is that, on its true construction, the settlement represented compensation for poor service provided by D1 as letting agent, not for breaches of breach of its repairing covenants as landlord and does not prevent C from recovering damages for the disrepair albeit that, even on that basis, the settlement was founded on the false premise that D1 was acting as letting agent, not as landlord.

60. C has provided a number of photographs showing damage to clothes and other possessions caused by damp and mould. I am satisfied on the balance of probabilities that those items were damaged so that they had to be thrown away and/ or replaced.
61. As set out above, C did not serve medical report with her Particulars of Claim, as required by the rules, showing that the disrepair caused her and her children personal injury. The order of Recorder King dated 29 July 2025 gave C permission to serve a report from a GP on the health of C and her children, but she did not serve such a report. She has however provided GP records (Consultation Information Sheets) which show that her daughter Amya attended A&E complaining of asthma on 8 December 2022. On 20 April 2023, she attended the GP reporting that she had been wheezy and had run out of her inhaler. At a consultation with her GP on 4 September 2023, C reported that Amya had symptoms of asthma with cough and dyspnoea, which got worse when she was exposed to damp, exercise, smoke and dust. A hospital discharge summary letter shows that Amya was admitted to A&E on 3 July 2024 when the diagnosis was “*exacerbation of asthma*”. She was recorded as having a history of asthma with poor compliance with her inhaler. It appears that she visited A&E again on 23 July 2024. GP records for C’s daughter Javalia show that, on 14 December 2022, she attended the GP complaining of a cough with sputum. The notes record that three people in the house had respiratory tract infections and were having antibiotics. The GP prescribed antibiotics for Javalia on that occasion. On 29 December 2022, she attended still reporting symptoms of runny nose and bad breathing. The GP diagnosed a virus. She attended again with similar symptoms on 8 January 2023, 22 February 2023 and 7 September 2023. During the February consultation, C

informed the GP that she thought Javalia's symptoms were "*caused by the dampness in the flat where they live.*" In September, C reported that she was living in a property with black mould awaiting repair and did not have any of these symptoms before "*living in her currently mouldy address*". She also reported that she was waiting for a new council property but had 8 children living with her, making it difficult to find a suitable house.

62. That evidence is consistent with C's evidence that Amya was admitted to hospital with asthma in December 2022, which C believed was caused by the damp and mould at the Property, and that C, Javalia and Takeela were also treated for respiratory conditions that month which C attributed to the same cause. However, it is not sufficient to prove medical causation on the balance of probabilities, bearing in mind other possible triggers for asthma and causes for respiratory infections, which are generally prevalent in the winter. As noted above, Ms Burzio recognised the absence of medical evidence but invited me to take these injuries into account when assessing damages for discomfort, inconvenience and anxiety. In my judgment, it is not appropriate to treat those "injuries" as attributable to the disrepair, giving rise to any specific uplift in general damages, where I am not satisfied of medical causation. However, it is appropriate to take into account that damp, mould and cold are well known to be deleterious to health, which is likely to increase the emotional stress and anxiety caused by the disrepair, as well as causing physical discomfort.

63. The purpose of an award of damages for breach of the covenant to repair is to put the tenant in the position s/he would have been in but for the breach of covenant. Such damages can include special damages for any specific costs or losses caused by the disrepair, such as damaged possessions or the costs of alternative accommodation, and general damages. Where a tenant remains in occupation of the property notwithstanding the breach of the covenant to repair, the loss requiring compensation is the loss of comfort and convenience which results from living in a property which was not in the state of repair which it ought to have been in if the landlord had performed his obligations. That sum may be ascertained in a number of ways including a notional reduction in the rent, or a global award for discomfort and inconvenience, or a mixture of the two, but even if the court

decides to make a global award, it should usually cross-check that award against the rent payable for the period of the disrepair. See Wallace v Manchester City Council (1998) 30 H.L.R. 1111. Ms Burzio invited me to award general damages against D1 in the sum of £33,858, which amounts to 60% of the rent (£1,350 per month) for the 38 months that she was in occupation, amounting to £30,780, plus the 10% uplift mandated by Simmons v Castle [2012] EWCA Civ 1288. She referred me to a number of quantum reports from the Housing Law Casebook which, insofar as they report a percentage of the rent allowed as damages, show a range of 30% for moderately serious damp and mould to 75% for the most serious disrepair including water penetration and lack of heating.

64. As set out above, I am satisfied that the Property was in significant disrepair in breach of D1's repairing obligations from the outset of the tenancy until C left at the end of June 2024. I agree with Ms Burzio's submissions in her skeleton argument that, as well as the disrepair being serious in terms of its impact on C and her family, D1 made assurances to C that it did not keep, fobbing her off and leading her to believe that "the landlord" was the problem, C had to involve the City Council which served the Improvement Notice but, even after that, D1 did not take sufficient timely action to ensure that it complied with its repairing obligations and the Property remained in poor condition when C left over a year after the Improvement Notice had been served. The evidence also shows that, although D1 sought to blame the size of C's household for the disrepair, it was aware of the number of occupants at the Property.

65. In those circumstances, I consider that the sum of £33,858, equating to 60% of the rent for the duration of the tenancy plus the Simmons uplift, is a reasonable sum to compensate C for the condition of the Property and its impact on her and her family.

66. C claims special damages in the sum of £10,233.92, broken down as follows in Ms Burzio's skeleton argument: listed items that were damaged and thrown away £6,103; listed replacement items £2,000.92; replacement kitchen tap £40; bus fares to take children to school from her new accommodation, and £2,090 based on a family ticket costing £11 per day for 38 weeks of a school year.

67. C has provided many photographs showing the items that were damaged by damp, which Ms Burzio has cross-referenced in the lists in her skeleton argument. I am satisfied that those items were damaged and replaced respectively, and that C is entitled to be compensated for their loss. However, C has not provided evidence of how she valued the items that were thrown away. Where items were replaced, she has claimed the cost of replacement. It appears that this is the cost of brand-new items but, in my judgment, damages should be limited to the used value of the goods in question whether or not they were replaced: replacement with brand new items represented betterment as compared with what C lost. There is no evidence of the used value of the items in question, which would vary depending on factors such as the nature of the item in question, its age and condition before it was damaged. On a broad-brush basis, I shall discount the sums claimed by C under these heads by 33% and award a total of £5,429.62 under these two heads. I allow the kitchen tap as claimed. I also allow the claim for travel expenses. It was reasonable for C to have kept her children at the same school given that she thought that the move to alternative accommodation was to be temporary, and it was reasonable for them to remain there for the school year through to July 2025. As she was previously able to walk them to school, the bus fares she has incurred were caused by the move, which was itself caused by the disrepair. I shall therefore award special damages in the total sum of £7,559.62.
68. The total award of general and special damages against D1 is therefore £41,417.62. After giving credit for the £2,000 agreed through the Property Redress Scheme, the total damages against D1, before the addition of any interest under s.69 of the County Courts Act 1984, is £39,417.62.
69. D1's Counterclaim against C is set out in a Schedule which includes rent arrears and other items amounting to a total of £13,884. D1 has provided no evidence to support its Counterclaim. I therefore agree with Ms Burzio that it should be dismissed.

The Claim against D2

70. As set out above, C's cause of action against D2 is for breach of the duty of care imposed by s.4 of DPA 1972; that is, a duty to all persons who might reasonably be expected to be affected by defects in the Property (which included C and her household) to take reasonable care in the circumstances to see that they were reasonably safe from personal injury or from damage to their property caused by a relevant defect. The duty of care arose when the D2 knew or ought in all the circumstances to have known of the relevant defect. As Ms Burzio submitted, unlike a landlord's repairing obligations, this does not require actual notice of the defect: the question whether D2 ought to have known of the defects includes consideration of what steps it might reasonably have taken, including inspecting the Property, to inform itself of its condition.
71. The correspondence that Mr Engel received from the Council on or about 10 March 2023 clearly put him on enquiry as to the condition of the premises such that, at the very least, he should have taken steps within a reasonable period after that correspondence to ascertain its condition. Allowing a reasonable time to arrange an inspection and report on its condition with a reasonable sense of urgency, in light of the Council's intervention, I consider that D2 should have ascertained the condition of the Property by the end of March 2023 at the latest.
72. Ms Burzio invited me to infer that Mr Engel knew about the defects earlier than that, on the basis that, for example, D1 informed D2 that it was "the landlord" that was delaying the repairs, it was likely that there were WhatsApp messages between D1 and D2 pre-dating the messages that D1 disclosed and, in correspondence between Mr Henderson and D2's solicitor during these proceedings, Mr Henderson referred to meetings between him and Mr Engel at which the defects had been discussed. On the other hand, that correspondence does not give the date of the meetings in question and is consistent with the meetings that C refers to, which took place in April and August 2023. Given that it would have been in D1's interests to show that D2 knew about the defects earlier than March 2023, I would expect D1 to have pleaded such earlier knowledge in its Part 20 Claim against D2, and to have disclosed any WhatsApp messages or other correspondence showing that knowledge, but it has not done so. Mr Engel denied that he knew about the defects before that date. C's evidence and the

contemporaneous messages between her and Mr Henderson and D1's other employees show that they were not open with her, but misled her about the true nature of their relationship and gave her assurances that they did not keep. The messages between Mr Henderson and Mr Engel show that, amongst other things, he thought C was a problem and was trying to assist Mr Engel and D2. As C accepted in her oral evidence, there may have been an element of Mr Henderson playing C and Mr Engel off against each other or being disingenuous to both of them.

73. On the balance of probabilities, I am not satisfied that D1 actually informed D2 or Mr Engel, or put them on enquiry about the condition of the Property, before March 2023.
74. Some of the defects appear to have been chronic, including the damp, the holes in the roof, the defective render to the front elevation, the loose window frame, the defective seals to the windows, and the leaking external pipe, which suggests that they were present before the Lease and AST were created. However, there is no positive evidence about the condition of the Property before the AST and the Lease in March 2021. In particular, there is no evidence that D2 knew of the defects before that date and took steps to conceal or disguise them. I am not prepared to draw that inference in the absence of such evidence. That is relevant, because, although D2 had an express right to enter to inspect and repair the Property (cl. 5.2 of the Lease), and such a right would also have been implied if necessary (Saner v Bilton (1878) 7 Ch.D. 815), I consider that the existence of such rights does not mean that a landlord "ought to have known" of defects for the purposes of s.4 of DPA 1972, in the absence of information that should have led a reasonable landlord to exercise those rights. Given that D1 had an obligation to inform D2 of any defects in the Property falling within D2's repairing covenants, it was not unreasonable for D2 to expect that D1 would inform it of any such defects and therefore not to proactively seek to exercise its right to enter and inspect if D1 had not done so.
75. For those reasons, I am not satisfied that D2 ought to have known about the defects for the purposes of s. 4 of DPA 1972 before 31 March 2023. I find that it

ought to have known about them from that date, and that is when its duty of care under s.4 first arose.

76. D2's pleaded Defence to the claim under s.4 of DPA 1972 is that it made enquiries of D1 and relied on D1's assurances that repairs were being addressed. The duty under s.4 is a duty to take reasonable care. Ms Thomas submitted that it was reasonable for D2 to rely on D1, given that D1 was C's immediate landlord and directly owed her repairing obligations under the implied terms in the AST. She submitted that the WhatsApp messages clearly show Mr Engel instructing Mr Henderson to carry out works and receiving information that works were being arranged or had been carried out. In other words, D2's delegation to and reliance on D1 was reasonable and was consistent with performance of its duty to take reasonable care to see that the occupants of the Property did not suffer personal injury or damage to their possessions.

77. I do not accept that D2 complied with its duty to "*take such care as is reasonable in all the circumstances...*", or that it was reasonable for it to place the reliance that it did on D1, after it had received the Improvement Notice. Although D1 was C's landlord and directly liable to C under the repairing obligations in the AST, as between D1 and D2, D2 was ultimately liable to carry out those repairs under the covenants in the Lease, as Mr Henderson pointed out to D2 in one of his WhatsApp messages. Furthermore, it was also directly liable to comply with the Improvement Notice. It was therefore not reasonable for D2 to assume that D1 was responsible for carrying out the repairs. I agree with Ms Burzio that the WhatsApp messages relied on by D2, read as a whole, do not show that D1 and D2 were consistently and proactively seeking to resolve the defects promptly. Mr Henderson's initial response was that he would seek to "knock back" the contents of the Notice; Mr Engel's was that he wanted C out "ASAP" and would obtain a report after she had left. When he attended the Property in March 2023, he did so surreptitiously, either passing himself off, or allowing Mr Henderson to pass him off, as a sub-contractor. He attempted to serve a s.21 notice and, following the warning from the Council about unlawful eviction and harassment, sent a former, struck off, solicitor to the Property unannounced. Many of the messages show or suggest that D1 and D2 had issues with liquidity, that Mr Engel was representing

to Mr Henderson that D2's finances were "tight", and D2 did not respond in a timely way to D1's requests for instructions and funds. But D2 has not provided any evidence of its financial position at the time. It also appears that the works required by the Improvement Notice were addressed in a piecemeal fashion rather than by obtaining a comprehensive report from a surveyor followed by a clear programme of works to have them completed efficiently. Works were not completed by the initial deadline in the Improvement Notice or the extended deadline, and defects were still present in June 2024 when C was moved. In the circumstances, although D2 authorised D1 to have some works done during 2023, it did not act reasonably to have the defects eliminated within as short a period of time as reasonably possible and therefore continued to expose C and her family to the risk of personal injury and damage to their possessions as a result of the defects.

78. I therefore find that D2 breached its duty of care under s.4 of DPA 1972 between 31 March 2023 and 29 June 2024.

79. In her skeleton argument Ms Burzio treats the damages that C can recover against D2 as being co-extensive with the damages recoverable against D1, including damages for the inconvenience, discomfort and distress arising from the disrepair. However, the cause of action against D2 for breach of the statutory duty of care is different from the cause of action against D1 for breach of its contractual repairing obligations. This gives rise to a question as to whether such damages for inconvenience, discomfort and distress can be recovered under s.4 of DPA 1972.

80. Ms Burzio informed me that she had been unable to find any authority directly addressing the damages recoverable under s.4 of DPA 1972, but she referred me to a number of authorities⁴ addressing the damages recoverable under s.1 of the Act which show: (a) that the purpose of an award of damages for breach of the statutory duty is to put the claimant in the position they would have been in had the duty not been breached; (b) the claimant is entitled to recover all reasonably foreseeable losses that are the natural consequence of the breach; (c) courts

⁴ Bayoumi v Protim Services Ltd (1998) 30 HLR 785 (CA); Harrison v Shepherd Homes Ltd [2011] EWHC 1811 (TCC); Bella Casa Ltd v Vinestone Ltd [2005] EWHC 2807; Vainker v Marbank Construction Ltd [2024] EWHC 667 (TCC); Wilson v HB (SWA) Ltd [2025] EWHC 1315 (TCC).

have awarded damages under s.1 of the Act for loss of use of buildings in appropriate cases.

81. However, s.1 and s.4 of the Act impose wholly different duties and, in my view, there is no obvious analogy between them. Authorities under s.1 therefore do not assist in addressing what damages are available under s.4. In broad terms, s.1 imposes a threefold duty on a builder carrying out work in connection with the provision of a dwelling to see that the work is carried out in a workmanlike or, where appropriate professional, manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed. As s.1 expressly imposes an obligation to see that the dwelling will be fit for habitation, it is not surprising (in my view) that courts have found that damages for loss of use and enjoyment are a reasonably foreseeable and natural consequence, falling within the contemplation of the statute, of a breach of that duty. If a property is not fit for habitation, then the person to whom the duty is owed will suffer a loss of use and enjoyment if they are unable to occupy it, or let it out, as a result. Although the authorities Ms Burzio referred to address loss of use and enjoyment rather than damages for inconvenience, discomfort and distress, Wallace v Manchester CC suggests that the latter are an analogue of the former where the intended user of property remains in occupation. It might, therefore, be a relatively short step to find that such damages are recoverable under s.1 if the person to whom the duty is owed is in occupation of a property that is not fit for habitation, as a result of a breach of the duty.

82. By contrast, s.4 of the Act does not expressly impose an obligation to see that the property should be fit for habitation. The duty is to take reasonable care to see that the persons to whom it is owed are reasonably safe from personal injury and damage to property resulting from relevant defects. In my view, the scope of this duty is significantly narrower than the scope of the duty under s.1. The heads of damages that are most obviously reasonably foreseeable, natural consequences falling within the contemplation of s.4 are damages for any personal injury or damage to property resulting from the landlord's breach of the duty of care.

83. Ms Burzio submitted that damages for inconvenience, discomfort and distress are recoverable, on the basis that it is reasonably foreseeable that a person who is in

occupation whilst being aware of the relevant defects, suffers the inconvenience, discomfort and distress of living in apprehension that they and their household might suffer personal injury or damage to their possessions in future. However, whilst that form of emotional distress might be foreseeable, in my view it does not fall within the scope of the duty under s.4, which is concerned with avoiding personal injury and damage to property, rather than the apprehension that they might happen.

84. Furthermore, I consider that, in common with other duties of care, the cause of action under s.4 is not complete until the occupant in question suffers personal injury or damage to their property. Thus, a landlord is in breach of the duty if he fails to take reasonable care to see that the occupiers of property are reasonably safe from personal injury or damage to their property resulting from relevant defects but (leaving aside the possibility of *quia timet* injunctive relief in an appropriate case), the person to whom the duty is owed is unable to sue unless they suffer some injury or damage as a result: they would not be able to claim damages based on the mere apprehension that they might suffer injury or damage in future. This tends to support my view that it is damages for personal injury and damage to possessions, rather than other heads of damage, that most naturally fall within the contemplation of the wording in section 4.

85. A further consideration which supports this view is that, when awarded for breaches of a landlord's repairing covenants, damages for inconvenience, discomfort and distress aim to put the tenant in the position they would have been in if the landlord had performed his repairing covenants, so far as money can do so. They therefore compensate the tenant for having to occupy a property that is out of repair, and are a measure of the resulting inconvenience, discomfort and distress to the tenant. But s.4 does not impose repairing obligations as such on the landlord. It depends on repairing obligations that already exist under a relevant tenancy. Where, as here, the relevant landlord does not owe those repairing obligations directly to a sub-tenant, s.4 does not operate to imply such direct repairing obligations but imposes a duty of care. Although related to the condition of the property, any inconvenience, discomfort and distress that might be suffered as a result of a breach of the duty of care under s.4 is different in kind from and not

directly equivalent to the inconvenience, discomfort and distress arising from breaches of repairing covenants.

86. If the landlord's breach of duty causes personal injury or damage to possessions, then the claimant will, in the usual way, be able to recover all foreseeable losses consequential upon that personal injury or damage to possessions. Damages for pain, suffering and loss of amenity are broad enough to include the emotional impacts of the injury itself. Similarly, where the breach of duty causes damage to the personal property of a residential occupier I consider that, in principle, they are entitled to damages for the inconvenience and distress resulting from that damage: in my view, such damages are reasonably foreseeable, natural consequences within the contemplation of the statute, given the particular status of the home as a place of security, safety and comfort, where the occupier should be able to live without suffering damage to their personal property.
87. However, for the reasons set out above, I do not consider that damages for inconvenience, discomfort and distress caused by the disrepair itself (equivalent to the damages that would be awarded for breaches of a landlord's repairing covenants) can be recovered as a freestanding head of damages under s.4 of DPA 1972 or that non-pecuniary damages are recoverable in the absence of some personal injury or damage to possessions.
88. As set out above, I am not satisfied on the balance of probabilities that C has shown medical causation between the condition of the Property and the injuries or illnesses she and her children suffered. It follows that she has not proved that she suffered personal injury as a result of D2's breach of its duty of care under s.4.
89. I am, however, satisfied that the damage to C's possessions was caused by D2's breaches that duty of care, in view of the number of complaints she made of such damage after 31 March 2023. I therefore award her damages for the loss and/ or replacement of those possessions in the same sum as against D1, £5,429.62 (see paragraph 67 above). In my view, the kitchen tap and cost of travelling to school were not caused by D2's breaches of its duty of care and/ or did not fall within the scope of that duty of care and I therefore do not award those sums.
90. For the reasons I have explained, I also find that C is entitled to damages for the inconvenience and distress associated with the damage to her personal

possessions. In my view, such damages should be modest and should bear a proportionate relationship to the value of the possessions in question and the length of time during which such damage took place. I award the sum of £5,000 for such inconvenience and distress in this case.

91. I shall therefore allow C's claim against D2 in the total sum of £10,429.62.

The Part 20 Claims

92. D1 claims an indemnity against D2 on the basis that "it is likely" that any disrepair proved by C was likely to have been caused by disrepair subject to D2's covenants in the lease and, in particular, damp and mould is likely to have been structural.

93. D2 denies D1's claim and makes a claim against D1 that D1 was liable to carry out the works identified in the Improvement Notice and seeks an order to that effect. In addition, D2 claims that D1 has continued to sublet the Property after expiry of the Lease and claims damages for breach of the terms of the Lease and rent arrears in the sum of £34,171.50 together with interest of £5,817.48, making a total of £39,988.98.

94. D1 denies that it is in breach of the Lease at all, but its Defence to D2's claim does not expressly address the rent arrears. If the arrears are not included within D1's denial of any breach of the Lease, the effect of CPR 16.5(4) is that D2 is required to prove them.

95. Neither D has provided a witness statement supporting its Part 20 Claim against the other. In the absence of such evidence, I am not able to determine their respective claims as to which of them is responsible for the disrepair or whether either should indemnify the other in respect of C's claims.

96. Ms Thomas submitted that I could enter judgment for the rent arrears claimed from D1 based on the updated Schedule of Loss and Schedule of Rent arrears even though they were not supported by Mr Engel's witness statement or oral evidence, as the arrears were claimed in D2's Amended Defence and Counterclaim which is verified by a statement of truth, and are set out in an updated Schedule and a rent statement showing the running totals of rent due, payments received and interest.

97. CPR 32.2(1) provides that the general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved (a) at trial by their oral evidence given in public and (b) at any other hearing by their evidence in writing. CPR 32.6(1) provides that the general rule is that evidence at hearings other than trial is to be by witness statement unless the court, a practice direction or rule provides otherwise; 32.6(2) provides that at hearings other than the trial a party may rely on the matters set out in (a) his statement of case.
98. The effect of these rules is therefore that, even in D1's absence, D2 was required to prove the rent arrears by giving oral evidence at trial and/ or providing a witness statement from a witness who could give evidence about them. D2 was not entitled to rely on its pleadings to prove the arrears at trial.
99. This is not a mere formality. The updated Schedule is itself not verified by a statement of truth. It claims arrears up to 24 February 2025 in the sum of £34,171.50 plus interest of £5,817.48. The running account shows that the last payment of rent was made on 24 March 2023. The Lease ended by effluxion of time on 22 March 2024. Although D2 alleges that D1 continued to sublet the Property after that, there is no evidence that D1 held over after 29 June 2024, when C left the Property. These matters require explaining but there is no evidence explaining them. Furthermore, the position regarding rent arrears is likely to be affected by the issues between D1 and D2 concerning responsibility for the repairs.
100. Therefore, in the absence of any evidence from D2 to prove the rent arrears, I decline to enter judgment in D2's favour against D1.

Conclusions and Disposal

101. For the reasons set out above I shall award judgment in C's favour against D1 in the sum of £39,417.62 plus interest under s.69 of the County Courts Act 1984. I shall award judgment in her favour against D2 in the sum of £10,429.62 plus interest on the same basis. I shall dismiss D1's counterclaim against C and each D's Part 20 claim against the other.

HHJ DUDDRIDGE

15 July 2026