

Is your house habitable?

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Laurence Cobb examines cases that help clarify the implications of the Defective Premises Act 1972

In most cases, parties to a construction contract are principally governed by the terms agreed between them in that contract. However, the law may intervene in certain circumstances where it is felt that additional protection is needed. Such a situation arises under the [Defective Premises Act 1972](#), which is now relatively mature legislation.

Section 1 of the act states that a person who is taking on work for or in connection with the provision of a dwelling owes a duty to every person who acquires an interest in that dwelling to ensure that the works are undertaken in a professional manner, using the proper materials, and that the dwelling is fit for habitation when it is completed.

There are two important points to bear in mind: first, this duty applies to residential dwellings only so as to ensure they are fit for habitation; and second, the duty does not exist between the original parties to a building contract alone, but can also apply to subsequent purchasers or tenants of that dwelling, as well as to those designing and project-managing the build.

Fit for habitation

It will be a question of fact in each case as to whether a building is fit for habitation. Perhaps unsurprisingly, in [Bole v Huntsbuild \[2009\] EWHC 483](#), as upheld by the Court of Appeal, inadequate foundations causing heave rendered the dwelling unfit to be occupied safely and without inconvenience, and therefore unfit for habitation. The general test is that a dwelling will be fit for habitation if it can be occupied for a reasonable time without risk to the occupants' health and safety, or without undue inconvenience or discomfort. What constitutes a reasonable period of time will depend on the nature of the defect, as was set out in [Rendlesham Estates v Barr \[2014\] EWHC 3968](#).

There is a defence under section 1(2) of the 1972 act if the person taking on such work does so in accordance with instructions given on behalf of another party, such as an architect or a project surveyor, unless the person performing the work has a duty to that other party to warn them of any defects in the instructions but fails to discharge this duty.

The most recent cases relating to the act have generally concerned the position of tenant and the landlord's duty of care under section 4, where the tenancy imposes an obligation on them to maintain or repair the premises or they have a right to enter the premises to carry out such maintenance or repair. As to what constitutes a relevant defect, it is only likely to apply where there is an obligation for the landlord to remedy the defect under the lease. Recent cases have shown that the act tends to be applied with some caution in this context.

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In the case of [Dodd v Raebarn Estates Limited and others \[2016\] EWHC 262 \(QB\)](#) , upheld by the Court of Appeal, the late Mr Dodd unfortunately fell down the stairs of a London flat while on honeymoon, subsequently passing away from his injuries. His wife brought a claim alleging the defects in the staircase were responsible for the fall, and thus that the lessor ? the freeholder ? and the developer management company were all liable.

It was accepted that the staircase breached both planning permission and the Building Regulations due to the lack of a handrail and its steep incline. However, as far as the head lessor was concerned the defect was not one arising from a lack of repair and therefore could not be a relevant defect under the act, which did not apply in this case. This may seem to be an unfortunate outcome, but the distinction was that a duty to repair is not the same as a duty to make premises safe.

Although the act did not come to a party?s rescue in the context of a landlord, it is still important to bear this piece of legislation in mind when advising on any dwelling because it is not possible to contract out of the duties imposed.

Contractors and consultants need to appreciate and manage their potential liability under the act, and for this reason may enter into guarantee schemes for new dwellings. Purchasers also need to keep in mind that the act can impose a liability on a contractor or a consultant in circumstances where the absence of a contract between the parties may otherwise make a claim difficult to argue.

Laurence Cobb is a consultant at the law firm [Taylor Wessing](#)

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