

Will fixed recoverable costs in housing conditions claims see the light of day?

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The Government has confirmed that the introduction of fixed recoverable costs in respect of housing conditions claims will be delayed for two years.

Fixed costs already apply to most low value personal injury claims and set the amount of legal costs the winning party can recover from the losing party. The Government planned to extend the application to most cases valued up to £100,000, including housing conditions claims. Initially it was proposed the extension would take place from April 2023, however the implementation was then delayed to October 2023, with it now confirmed that whilst those changes will go ahead as planned for other civil claims, it will be delayed for a further two years for housing conditions claims, to ensure they are aligned with wider reforms within the housing sector. Given this two year extension will take us beyond the next general election, it is possible fixed costs in a housing context is reconsidered in its entirety by an incoming government.

Fixed costs in a housing conditions context is a controversial topic. Following the introduction of fixed costs in personal injury claims, claims management companies and associated firms of solicitors moved into the housing conditions arena. With a focus on maximising damages and costs by prolonging the disrepair period, there is a view that some firms advise tenants to refuse access to landlords for repairs until works and damages are agreed which, in relation to works, is contrary to a landlord's statutory obligation to carry out works and a tenant's corresponding obligation to allow access but, more importantly, delays resolution of the disrepair forcing tenants to live in potentially hazardous conditions. The tragic inquest of Awaab Ishak highlighted this issue, and whilst the focus for the Coroner was the actions of the Housing Association and their policy of not carrying out works until they had been agreed with the Claimant's solicitors, even after commentary from the coroner, the Housing Ombudsman and the Secretaries of State for Housing and Health confirming works should be carried out as soon as possible, we are still seeing certain firms of solicitors advising their clients to deny access for works. From a landlord's perspective, the introduction of fixed costs for housing conditions claims would likely end the involvement of those less scrupulous firms.

From a tenant's perspective, it is suggested that the introduction of fixed costs will prevent access to justice on the basis the proposed fees are unsustainable and will cause firms to exit the market. For those firms who operate on a no win no fee basis, the cases they win and can recover their costs at market rate cover their costs on those cases they lose or do not pursue following the pre-action protocol process. For those firms offering legal aid, when they are successful on a claim they can recover market rates from their opponent, rather than the significantly lower legal aid rate, buoying up their legal aid practice. Fixed costs could make both models financially unviable.

What can landlords do to try and reduce the number of claims?

On the basis landlords are facing at least another two years of BAU as far as costs for legal claims are concerned, what should they be doing to try to reduce the number of claims they face? In short – make sure their housing is of an appropriate standard. As always, knowing your housing stock, the issues that arise and planning appropriately for works is key. In addition, landlords should be responding promptly to any repair need or complaint and investigating and undertaking any necessary repairs as soon as possible. These steps should prevent many claims from being brought, enable a robust denial of liability in speculative claims and limit the value of damages

and costs across the portfolio of housing disrepair. Given the current focus on housing conditions following the Awaab Ishak inquest, social landlords must ensure repairs are a priority.

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