Court of Appeal

29 July 1985

B e f o r e :

Lord Justice LAWTON, Lord Justice DILLON and Lord Justice NEILL

Between:

QUICK
V
TAFF-ELY BOROUGH COUNCIL

N T Hague QC and Keith Bush (instructed by Phillips & Buck, of Cardiff) appeared on behalf of the appellants; L J Blom-Cooper QC and J W Gaskell (instructed by Spicketts, of Pontypridd) represented the respondent.

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1. Giving the first judgment at the invitation of Lawton LJ, DILLON LJ said: This appeal, from a decision given by His Honour Judge Francis in the Pontypridd County Court on November 2 1984 raises, at any rate if His Honour was right in his decision, issues of very considerable importance to local authorities and to all others who are concerned with the extent of liability under a repairing covenant in a lease or tenancy agreement relating to a dwelling-house.

2. The appellants, who were the defendants in the action, are the Taff-Ely Borough Council. They own various housing estates, including one at Rhydyfelin, the houses on which were constructed at the beginning of the 1970s in accordance with the standards of those times. One of those houses, known as 8 Shakespear Rise, Rhydyfelin, was let by the council in or about 1976 on a weekly tenancy to the plaintiff in the action, respondent to this appeal, Mr Quick.

3. It is common ground that, under section 32(1) of the Housing Act 1961, there is to be implied in the tenancy agreement a covenant by the council as lessor to keep in repair the structure and exterior of the dwelling-house. Moreover, it is provided by subsection (3) of section 32 that, in determining the standard of repair required by the lessor's repairing covenant, regard is to be had to the age, character and prospective life of the dwelling-house and the locality in which it is situated.

4. By his particulars of claim in the action the plaintiff claimed specific performance of that repairing covenant and damages for past breaches. His claims fell under two headings, condensation and water penetration. In this court we are concerned only with the claim in respect of condensation. So far as the water penetration is concerned, which came about because the frame at the head of the front door was damaged and the front door sill was defective, and also because there was a gap at sill level under the living-room window, the council accepts the findings of the judge and does not dispute its liability.

5. To understand the problem about condensation, it is necessary to say a bit more about the house. It is a quite small terraced house, though, because of levels, the terrace is stepped. On the ground floor the front door leads into a hall, with stairs up to the first floor. To the left of the hall is the kitchen and at the back of the hall and kitchen, across the full width of the

house, is the living-room. There is a wc to the right of the front door. Upstairs there are three bedrooms and a bathroom. Most importantly, all the windows in the house are single-glazed with metal frames set in wooden window surrounds, and the lintels above the windows have no insulation material facing them; the lintels are, in fact, of concrete, though thought at the trial to have been metal, but nothing turns on any difference between metal and concrete. The house was fitted with central heating by a warm-air ducted system.

6. The plaintiff lived in the house with his wife and four daughters. It is his misfortune that for the last five years he has been unemployed.

7. There is no doubt at all that there has for years been very severe condensation in the house, which has rendered the living conditions of the plaintiff and his family appalling. The house was redecorated by the council shortly before the plaintiff became tenant, but the effects of condensation soon became apparent. There is uncontradicted evidence that the plaintiff complained again and again to the council's officials about the condition of the house, but all his complaints were ignored and in the end he started this action.

8. The detailed evidence about the condensation and its causes was given by the plaintiff's architect, Mr Pryce-Thomas of Pontypridd. He wrote two reports of January 24 1983 and December 22 1983 which were in evidence, and he also gave oral evidence at the trial which confirmed his reports. The council called no evidence and the judge found Mr Pryce-Thomas to be an impressive and fair-minded expert witness whose evidence he accepted.

9. The evidence shows that there was severe condensation on the walls, windows and metal surfaces in all rooms of the house. Water had frequently to be wiped off the walls; paper peeled off the walls and ceilings; woodwork rotted, particularly inside and behind the fitted cupboards in the kitchen; fungus or mould growth appeared in places; and particularly in the two back bedrooms there was a persistent and an offensive smell of damp. Among the places where there was mould growth were the wooden sills and surrounds of the windows in the bedrooms, and some of these have become rotten. Additionally, in the bedrooms condensation caused the nails used for fixing the ceiling plasterboard to sweat and, though it is not mentioned in the judge's judgment, there was some perishing of the plaster due to excessive moisture.

10. The condensation came about from the warm air of the environment in the rooms reaching the cold surfaces of the building. The moisture of the condensation was then absorbed by the atmosphere and transferred to bedding, clothes and other fabrics, which became mildewed and rotten. There was evidence that carpets and curtains had been ruined - but that in the living-room and hall could well be attributable to the water penetration. There was evidence which the judge accepted that a three-piece suite in the living-room was ruined by damp so that it smelt and rotted and had to be thrown out. The evidence of the plaintiff and his wife was that, because of the appearance and smell, they hardly used the living-room, took visitors to the kitchen and sent the children up to their parents' bedroom to watch TV.

11. I would conclude that, by modern standards, the house was in winter - when, of course, the condensation was worst - virtually unfit for human habitation.

12. Mr Pryce-Thomas said that the condensation was caused by:

    (a) cold bridging from the window lintels because there was no insulating material;

    (b) sweating from the single-glazed metal windows (and a wooden infill panel under the living-room window); and

    (c) inadequate heating both in respect of the system and by the occupier not maintaining a high enough thermostat setting.

He added that the problem was aggravated by the plaintiff's gas cooker and washing machine, presumably because these, when in use, would be sources of heat.

13. He said in his second report of December 1983 that, to 'alleviate' the problems the property was experiencing, the existing metal windows should be replaced by windows with frames of warm material, such as timber or UPVC window frames, and the lintels over the windows should have insulation material facings. He added that, in his opinion, a new radiator system to all rooms, designed to give the proper standards to the various rooms, was necessary in place of the existing warm-air system, which he regarded as 'doubtful in being able to maintain normal accepted heating standards'.

14. He made it clear, however, in the course of his evidence that the house was built in accordance with the regulations in force and standards accepted at the time it was built. He said that, when these houses were built, no one realised the problems of cold bridging nor the inadequacy of central-heating systems such as that which was installed in the house. Condensation had become more and more of a problem in recent years.

15. At the opening of the trial the plaintiff's counsel applied to amend the pleadings by claiming that the central-heating system was defective, but the judge refused leave as the application was made too late and would involve a new case which the council had not come prepared to meet. Accepting the evidence of the plaintiff and his wife and Mr Pryce-Thomas, however, he held that the council was in breach of its repairing covenant in respect of the condensation as well as the damp penetration. He therefore awarded the plaintiff a global sum for damages to cover both heads and he made an order for specific performance of the repairing covenant, which requires the council, so far as the condensation is concerned, to replace the metal-frame windows and face the lintels as recommended by Mr Pryce-Thomas.

16. In the event, the order for specific performance is no longer required as the council has rehoused the plaintiff and his family elsewhere since the trial. Mr Blom-Cooper QC for the plaintiff has accordingly suggested that, on any view, the order for specific performance should be discharged and be replaced by a declaration. There remains, however, a lis between the parties because of the award of damages. But the case is of an importance to the council which is far beyond the award of damages because, as the judge surmised, his decision as to the effect of the repairing covenant in relation to this house will affect very many other houses on this and other council estates. We are told by counsel for the council that the total cost in respect of the council's other houses of similarly replacing metal-framed windows with timber or UPVC framed
windows and of facing the lintels with insulation material has been estimated as in the region of £ 9m.

17. The case turns on the construction and effect of the repairing covenant in section 32 of the 1961 Act. Before I turn to that, however, I should mention one apparent oddity in the legislation. There is in section 6 of the Housing Act 1957 a provision that, in any contract for the letting of a house for human habitation at an annual rent not exceeding £ 80 in the case of a house in London and £ 52 in the case of a house elsewhere, there is to be implied a condition that the house is at the commencement of the tenancy, and an undertaking that the house will be kept by the landlord during the tenancy, fit for human habitation. That section has legislative antecedents, albeit at lower rent levels, in the Housing Act 1936, and before that in the Housing Act 1925 and before that in an Act of 1909. It was amended in 1963 as a result of the creation of the Greater London Council, but without altering the rent levels. It seems that the section as so amended has remained on the statute book ever since, but - for whatever reason - the rent levels have never been increased. Therefore, in view of inflation, the section must now have remarkably little application. It is not available to the plaintiff in the present case because his rent is too high, even though he is an unemployed tenant of a small council house.

18. The learned judge delivered a careful reserved judgment in which he reviewed many of the more recent authorities on repairing covenants, starting with *Pembery* v *Lamdin* [1940] 2 All ER 434. His ultimate reasoning seems to me to be on the following lines viz: (1) Recent

authorities such as *Ravenseft Properties Ltd* v *Davstone (Holdings) Ltd* [1980] QB 12 and *Elmcroft Developments Ltd* v *Tankersley-Sawyer* (1984) 270 EG 140, [1984] 1 EGLR 47 show that works of repair under a repairing covenant, whether by a landlord or a tenant, may require the remedying of an inherent defect in a building; (2) The authorities also show that it is a question of degree whether works which remedy an inherent defect in a building may not be so extensive as to amount to an improvement or renewal of the whole which is beyond the concept of repair; (3) In the present case the replacement of windows and the provision of insulation for the lintels does not amount to such an improvement or renewal of the whole; (4) Therefore, the replacement of the windows and provision of the insulation to alleviate an inherent defect is a repair which the council is bound to carry out under the repairing covenant.

19. But, with every respect to the learned judge, this reasoning begs the important question. It assumes that any work to eradicate an inherent defect in a building must be a work of repair, which the relevant party is bound to carry out if, as a matter of degree, it does not amount to a renewal or improvement of the building. In effect, it assumes the broad proposition urged on us by Mr Blom-Cooper for the plaintiff that anything defective or inherently inefficient for living in or ineffective to provide the conditions of ordinary habitation is in disrepair. But that does not follow from the decisions in *Ravenseft* and *Elmcroft* that works of repair *may* require the remedying of an inherent defect.

20. Mr Blom-Cooper's proposition has very far-reaching implications indeed. The covenant implied under section 32 is an ordinary repairing covenant. It does not apply only to local authorities as landlords, and this court has held in *Wainwright* v *Leeds City Council* (1984) 270 EG 1289, [1984] 1 EGLR 67 that the fact that a landlord is a local authority which is discharging a social purpose in providing housing for people who cannot afford it does not make the burden of the covenant greater on that landlord than it would be on any other landlord. The construction of the covenant must be the same whether it is implied as a local authority's covenant in a tenancy of a council house or is expressly included as a tenant's or landlord's covenant in a private lease which is outside section 32. A tenant under such a lease who had entered into such a repairing covenant would, no doubt, realise, if he suffered from problems of condensation in his house, that he could not compel the landlord to do anything about those problems. But I apprehend that the tenant would be startled to be told - as must follow from Judge Francis' decision - that the landlord has the right to compel him, the tenant, to put in new windows. If the reasoning is valid, where is the process to stop? The evidence of Mr Pryce-Thomas was that changing the windows and insulating the lintels would 'alleviate' the problems, not that it would cure them. If there was evidence that double-glazing would further alleviate the problems, would a landlord, or tenant, under a repairing covenant be obliged to put in double-glazing? Mr Pryce-Thomas said that a radiator system of heating to all rooms in the place of the warm air system was 'necessary'; if the judge's reasoning was correct, it would seem that, if the point had been properly pleaded early enough, the plaintiff might have compelled the council to put in a radiator system of heating.

21. In my judgment, the key factor in the present case is that disrepair is related to the physical condition of whatever has to be repaired and not to questions of lack of amenity or inefficiency. I find helpful the observations of Atkin LJ in *Anstruther-Gough-Calthorpe* v *McOscar* [1924] 1 KB 716 at 734 that repair 'connotes the idea of making good damage so as to leave the subject so far as possible as though it had not been damaged'. Where decorative repair is in question one must look for damage to the decorations, but where, as here, the obligation is merely to keep the structure and exterior of the house in repair, the covenant will come into operation only where there has been damage to the structure and exterior which requires to be made good.

22. If there is such damage caused by an unsuspected inherent defect, then it may be necessary to cure the defect, and thus to some extent improve without wholly renewing the property as the only practicable way of making good the damage to the subject-matter of the repairing covenant. That, as I read the case, was the basis of the decision in *Ravenseft.* There there was an inherent defect when the building, a relatively new one, was built in that no expansion joints had been included because it had not been realised that the different coefficients of

expansion of the stone of the cladding and the concrete of the structure made it necessary to include such joints. There was, however, also physical damage to the subject-matter of the covenant in that, because of the differing coefficients of expansion, the stones of the cladding had become bowed, detached from the structure, loose and in danger of falling. Forbes J in a very valuable judgment rejected the argument that no liability arose under a repairing covenant if it could be shown that the disrepair was due to an inherent defect in the building. He allowed in the damages under the repairing covenant the cost of putting in expansion joints, and in that respect improving the building, because, as he put it, on the evidence 'in no realistic sense . . . could it be said that there was any other possible way of reinstating this cladding than by providing the expansion joints which were in fact provided'.

23. The *Elmcroft* case was very similar. There was physical damage from rising damp in the walls of a flat in a fashionable area of London. That was due to an inherent defect in that when the flat had been built in late-Victorian times as a high-class residential flat, the slate damp-proof course had been put in too low and was therefore ineffective. The remedial work necessary to eradicate the rising damp was, on the evidence, the installation of a horizontal damp-proof course by silicone injection and formation of vertical barriers by silicone injection. This was held to be within the landlord's repairing covenant. It was necessary in order to repair the walls and, although it involved improvement over the previous ineffective slate damp-proof course, it was held that, as a matter of degree, having regard to the nature and locality of the property, this did not involve giving the tenant a different thing from that which was demised. The decision of this court in *Smedley* v *Chumley & Hawke Ltd* (1981) 44 P & CR 50* is to the same effect; the damage to a recently constructed restaurant built on a concrete raft on piles over a river could be cured only by putting in further piles so that the structure of the walls and roof of the restaurant were stable and safe upon foundations made structurally stable.

24. The only other of the many cases cited to us which I would mention is *Pembery* v *Lamdin* [1940] 2 All ER 434. There the property demised was a ground-floor shop and basement, built 100 years or more before the demise. The landlord was liable to repair the external part of the premises and there was physical damage to the walls of the basement in that they were permeated with damp because there had never been any damp-proof course. The works required by the tenant to waterproof the basement were very extensive, involving cleaning and asphalting the existing walls, building internal brick walls and laying a concrete floor. This would have involved improvement to such an extent as to give the tenant a different thing from what had been demised and it was therefore outside the repairing covenant. But Slesser LJ appears to recognise at p 438 E-F that repointing of existing basement walls where the mortar had partly perished would have been within the repairing covenant.

25. In the present case the liability of the council was to keep the structure and exterior of the house in repair - not the decorations. Though there is ample evidence of damage to the decorations and to bedding, clothing and other fabrics, evidence of damage to the subject-matter of the covenant, the structure and exterior of the house, is far to seek. Though the condensation comes about from the effect of the warm atmosphere in the rooms on the cold surfaces of the walls and windows, there is no evidence at all of physical damage to the walls - as opposed to the decorations - or the windows.

26. There is indeed evidence of physical damage in the way of rot in parts of the wooden surrounds of some of the windows but (a) that can be sufficiently cured by replacing the defective lengths of wood and (b) it was palpably not the rot in the wooden surrounds which caused damage to the bedding, clothes and fabrics in the house, and the rot in the wooden surrounds cannot have contributed very much to the general inconvenience of living in the house for which the judge awarded general damages.

27. There was also, as I have mentioned, evidence of nails sweating in bedroom ceilings, and of some plaster perishing in a bedroom. The judge mentions the sweating nails in his judgment, but I have not found any mention of the perishing of plaster. The judge did not ask himself - since on the overall view he took of the case it was not necessary--whether these two elements of structural disrepair (since the council accepts for the purposes of this case in this court that the plaster was part of the structure of the house) were of themselves enough to

require the replacement of the windows etc. They seem, however, to have been very minor elements indeed in the context of the case which the plaintiff was putting forward, and, in my judgment, they do not warrant an order for a new trial or a remission to the judge for further findings, save in respect of the reassessment of damages as mentioned below.

28. As I have already mentioned, Mr Pryce-Thomas used the word 'alleviate' to describe the effect which the replacement of the windows and the facing of the lintels with insulation materials would have on the problems of condensation. At one point in his judgment the judge refers to 'the work propounded by Mr Pryce-Thomas as necessary to cure the condensation problems'. This must be a slip, because alleviation *prima facie* falls short of cure. However, as the extent of alleviation was not probed in the court below, it is inappropriate to make any further comment.

29. It does appear from Mr Pryce-Thomas' report that the problems of condensation would have also been alleviated if the plaintiff had kept the central heating on more continuously and at higher temperatures. In that event the walls and windows would have remained warm or warmer and condensation would have been reduced. As to this, the judge appreciated that some people for financial reasons have to be sparing in their use of central heating, and he found that there was no evidence at all to suggest that the life-style of the plaintiff and his family was likely to give rise to condensation problems because it was outside the spectrum of life-styles which a local authority could reasonably expect its tenants to follow. In my judgment, that finding answers the argument that it would be anomalous or unreasonable that this house should be held to be in disrepair because the plaintiff cannot afford to keep the heating on at a high-enough temperature, whereas an identical adjoining house would not be in disrepair because the tenant had a good job and so spent more on his heating. If there is disrepair which the council is by its implied covenant bound to make good, then it is no answer for the council to say that, if the tenant could have afforded to spend more on his central heating, there would have been no disrepair, or less disrepair.

30. But the crux of the matter is whether there has been disrepair in relation to the structure and exterior of the building and, for the reasons I have endeavoured to explain, in my judgment there has not, quoad the case put forward by the plaintiff on condensation as opposed to the case on water penetration.

31. I would accordingly allow this appeal. I would consequently set aside the order of the learned judge, save in respect of the award of costs and legal aid taxation, and I would remit the case to the learned judge to reassess the damages (which, as I have mentioned, he assessed globally to cover both heads of claim) in the light of the judgments of this court.

32. Agreeing, LAWTON LJ said: It is with regret that I have decided that this appeal on the points taken in this court by the defendant council must be allowed. The case will have to be remitted to the county court for His Honour Judge Francis to reassess the damages, if they cannot be agreed, as I hope they will be.

33. When I read the papers in this case I was surprised to find that the plaintiff had not based his claim on an allegation that at all material times the house let to him by the defendant council had not been fit for human habitation. The uncontradicted evidence, accepted by the trial judge, showed that furniture, furnishings and clothes had rotted because of damp and the sitting-room could not be used because of the smell of damp. I was even more surprised to be told by counsel that the provisions of the Housing Act 1957, as amended by the London Government Act 1963, did not apply to the plaintiff's house. By section 6 of the 1957 Act, on the letting of a house at a specified low rent, a covenant is implied that the landlord will keep it in a condition fit for human habitation. For most of the time the plaintiff was in occupation of the house let to him by the defendant council it is arguable that it was not fit for human habitation. Unfortunately, the figures which were fixed as being low rents have not been changed for over 20 years. In 1965 a low rent outside central Greater London was one not exceeding £ 52 per annum. The present-day equivalent of that figure, when inflation is taken into account, is over £ 312. The plaintiff's rent of £ 6.75 per week in 1976 was well above the statutory figure. This case would seem to indicate that a new definition of a low rent is

needed. It has to be approached in the same way as the letting of any house which is outside the provisions of section 6 of the Housing Act 1957, as amended, in respect of which there is a covenant by the landlord 'to keep in repair the structure or exterior . . .'. The standard of repair may depend on whether the house is in a South Wales valley or in Grosvenor Square; but, wherever it is, the landlord need not do anything until there exists a condition which calls for repair. As a matter of the ordinary usage of English, that which requires repair is in a condition worse than it was at some earlier time. This usage of English is, in my judgment, the explanation for the many decisions on the extent of a landlord or tenant's obligation under covenants to keep houses in repair. Broadly stated, they come to this: a tenant must take the house as he finds it; neither a landlord nor a tenant is bound to provide the other with a better house than there was to start with; but, because almost all repair work requires some degree of renewal, problems of degree arise as to whether after the repair there is a house which is different from that which was let. I do not find it necessary to review the cases which were decided before 1980.

34. During the last 20 years the way in which houses and other buildings have been constructed has produced new problems. Traditional materials may not have been used: new methods of construction may have been employed. The materials may fail; the methods may prove to have been unsatisfactory, causing damage; the building may have got into a worse condition than it was when the lease was granted. In such cases there is need for repair. The landlord or the tenant may be under an obligation to put right what has gone wrong; and, in putting right what has gone wrong, it may be necessary to abandon the use of the defective materials or to use a different and better method of construction.

35. When something like this happens, does the landlord or the tenant have a better building? In one sense he does: he gets a building without the design defect which caused the damage; but the repair could only have been done in a sensible way by getting rid of the design defect. Forbes J had to consider this problem in *Ravenseft Properties Ltd* v *Davstone* (*Holdings*) *Ltd* [1980] QB 12. In that case the repair work could not be done satisfactorily without getting rid of a design fault. He adjudged that doing so did not amount to such a change in the character of the building as to take the works out of the ambit of the covenant to repair: see pp 21G - 22A. This court in *Smedley* v *Chumley & Hawke Ltd* (1981) 44 P & CR 50 approached the problem in the same way. The *Ravenseft* case does not seem to have been cited. It was, however, cited to this court in *Elmcroft Developments Ltd* v *Tankersley-Sawyer* (1984) 270 EG 140, [1984] 1 EGLR 47 and clearly approved. It was not cited to this court in *Wainwright* v *Leeds City Council* (1984) 270 EG 1289. In the latter case counsel for the tenant seems to have based his unsuccessful submissions on social rather than legal grounds. I am satisfied that the approach of Forbes J in the *Ravenseft* case was right.

36. It follows that, on the evidence in this case, the trial judge should first have identified the parts of the exterior and structure of the house which were out of repair and then have gone on to decide whether, in order to remedy the defects, it was reasonably necessary to replace the concrete lintels over the windows, which caused 'cold bridging', and the single-glazed metal windows, both of which were among the causes, probably the major causes, of excessive condensation in the house. An argument along the following lines was put before this court: the evidence established that some of the wooden frames into which the single-glazed metal windows were inserted had rotted and that nearby plaster had crumbled away. Mr Hague, for the purposes of this case, accepted that the plaster was part of the structure. Repairing the wooden frames and the plaster could be done sensibly only if the single-glazed metal windows and the lintels were replaced by ones of better design. The defendant council should have appreciated that this was so. A submission of this kind would have required the trial judge to make the findings of the same kind as Forbes J made. He made none, almost certainly because he was not asked to do so. He referred to Forbes J's judgment in these terms:

    He held that want of repair due to an inherent defect could fall within the ambit of a repairing covenant and that it was a question of degree whether work could properly be described as repair or whether it so changed the character of the building as to involve giving back to the landlord a different building from that demised.

He seems to have overlooked the important fact in the *Ravenseft* case that the cladding around the building was in disrepair and could be repaired in a sensible way only if the design fault were put right. In my judgment, there must be disrepair before any question arises as to whether it would be reasonable to remedy a design fault when doing the repair. In this case, as the trial judge found, there was no evidence that the single-glazed metal windows were in any different state at the date of the trial from what they had been in when the plaintiff first became a tenant. The same could have been said of the lintels. The judge misdirected himself in finding that these windows required repair.

37. I agree with the order suggested by Dillon LJ.

38. Also agreeing, NEILL LJ said: I, too, agree that this appeal should be allowed for the reasons given by my lords.

39. The plaintiff's claim is based on the statutory covenant implied in his lease by virtue of section 32(1) of the Housing Act 1961. That subsection provides *inter alia* that in any lease of a dwelling-house for a term of less than seven years there shall be implied a covenant by the lessor 'to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes)'.

40. It is, therefore, necessary to inquire whether the council were in breach of that implied covenant and, if so, in what respects. On the evidence it seems clear that the council were in breach of the covenant, but only in respect of:

    (a) some parts of the wooden surrounds of some of the windows; and

    (b) some plaster damage.

    There was no evidence, however, to indicate any damage to or want of repair in the metal windows themselves or the concrete lintels or, indeed, any other part of the 'structure and exterior'.

41. The authorities to which we were referred established that, in some cases, the only realistic way of effecting the relevant repairs is to carry out some additional work which will go somewhat further than putting the property back into its former condition and will indeed result in some improvement. But this case does not fall into that category. The repair work consisting of the replacement of the defective parts of the wooden surrounds and the replacement of the areas of plaster did not require, as a realistic way of effecting those repairs, the replacement of the metal windows by wooden-framed windows or windows with PVC frames.

42. I have reached this conclusion with regret, because the evidence as to the conditions in which Mr Quick and his family had to live until they were recently rehoused is a source of anxiety. But I see no escape from the conclusion which this court has reached.

43. I would concur in the order proposed by Dillon LJ.

    The appeal was allowed. No order was made as to costs save for legal aid taxation of the respondent's costs. Leave to appeal to the House of Lords was refused.