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RICS Dilapidations and MEES

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# Dilapidations and MEES

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## Impact of MEES on Dilapidations Claims

- Contractual Obligations

Dilapidations is a claim for damages properly recoverable at law as a consequence of alleged breach of contract.



# Dilapidations and MEES

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## Impact of MEES on Dilapidations Claims

- Statutory Obligations
  - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.
  - The Building Regulations 2010.
  - Approved Document L2B?



## Contractual Interpretation

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What is the standard of repair?

What exactly must the tenant do to comply with their contractual promises?

What is the lease (contractually) compliant standard of repair and configuration of the property?



## Standard of Repair?

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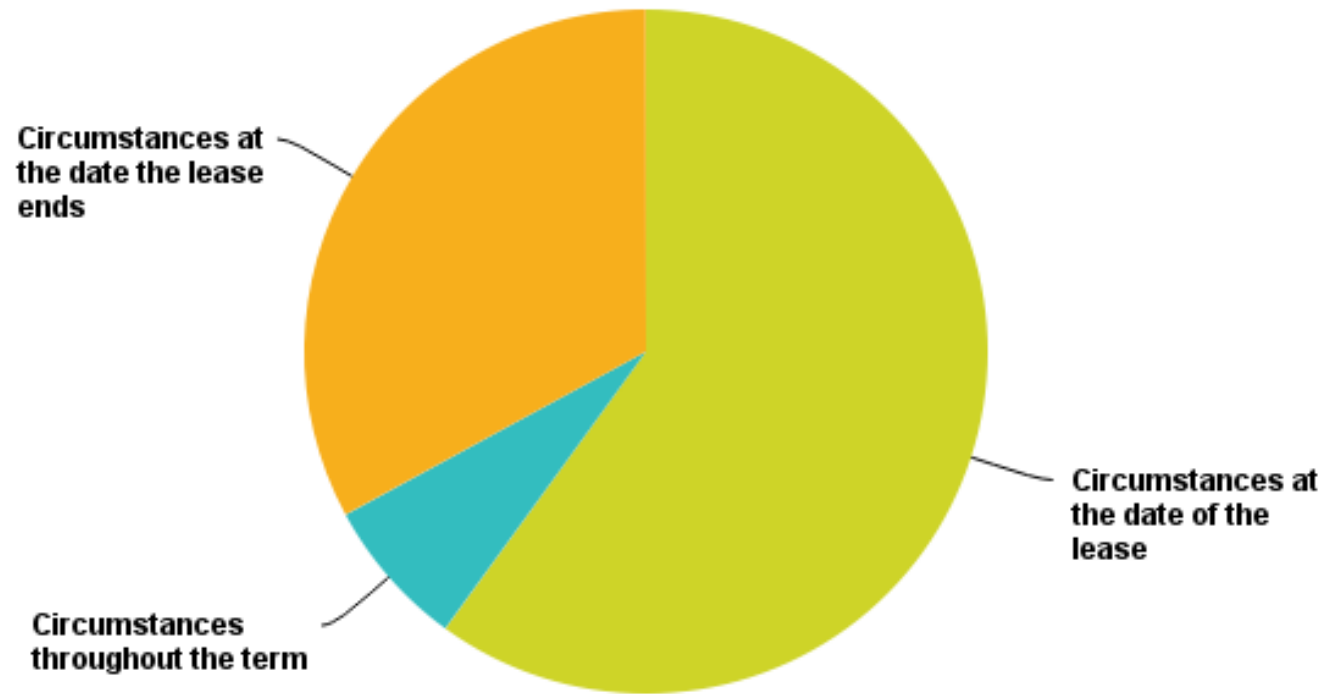
- It is thought that the approach of the court in *Proudfoot v Hart* (age, character etc.) represents the proper standard of repair under a “general” covenant to repair.
- Is the standard of repair defined:
  - a) By circumstances at the date of the lease.
  - b) Circumstances throughout the term.
  - c) The date for delivering up the premises.



## Standard of Repair?

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- It is thought that the approach of the court in *Proudfoot v Hart* (age, character etc.) represents the proper standard of repair under a “general” covenant to repair.
- Is the standard of repair defined:
  - a) By circumstances at the date of the lease - 29
  - b) Circumstances throughout the term - 2
  - c) The date for delivering up the premises - 28





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Answer Choices	Responses	
Circumstances at the date of the lease	<b>60.00%</b>	93
Circumstances throughout the term	<b>7.10%</b>	11
Circumstances at the date the lease ends	<b>32.90%</b>	51
<b>Total</b>	<b>155</b>	



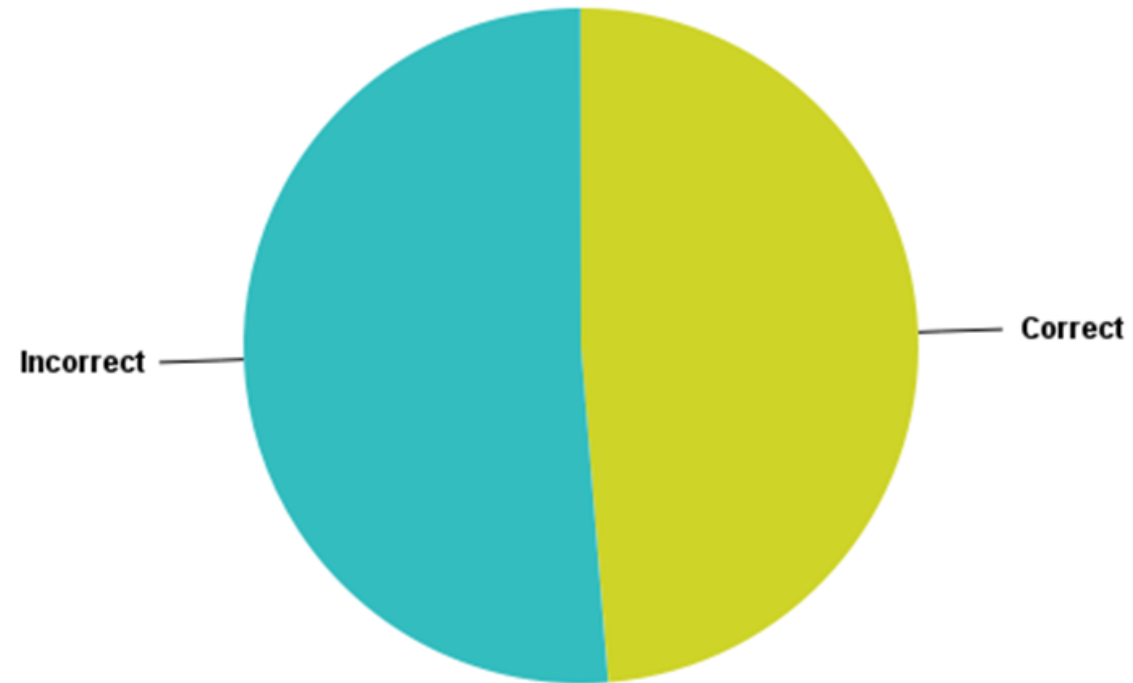


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A covenant in a lease requires the tenant: "To keep in good and substantial repair PROVIDED THAT the obligation to keep the Demised Premises in good and substantial repair shall not under any circumstances require the Tenant to repair maintain or otherwise yield up the Demised Premises in any greater state of repair or condition than at the date hereof as evidenced by the attached schedule of condition dated XX."

The Lease was completed by landlord and tenant but the schedule of condition was never prepared and attached. In the absence of the Schedule of Condition the tenant's repairing obligation is effectively FRI and unlimited.

Is this statement correct or incorrect?





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Answer Choices	Responses
Correct	48.72% 76
Incorrect	51.28% 80
<b>Total</b>	<b>156</b>



## Contractual Obligations

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- Understand the legal principles applicable to a claim for damages.
- Undertake due diligence to establish the contractually compliant state / configuration of the property.
- Inspect to establish whether there have been breaches.
- What is the “Lease compliant configuration of the property?”  
i.e. What does the contract require to be delivered up and in what condition?



## Statutory Obligations

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- Require something to be done.
- Regulate the way in which something is done.



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Making the Tenant Pay?

Evidence – is critical to dilapidations claims.

Laindon Holdings Limited v South Essex Mental Health and  
Community Care NHS Trust.



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## Laindon Holdings Limited v South Essex Mental Health and Community Care NHS Trust

*I make two uncontroversial observations in relation to clause 3.3.1 It is common ground that the expression “good condition” can be wider in scope than merely putting in repair. In other words, an item may have been repaired or put in repair but still not achieve good condition. That said, good condition does not, of course mean perfect condition.*



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## Laindon Holdings Limited v South Essex Mental Health and Community Care NHS Trust

*Secondly, as to the standard of repair, this is such repair as, having regard to the age, character and locality of the premises, would make them reasonably fit for the occupation of a reasonably minded tenant of the sort likely to take them.*





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Laindon Holdings Limited v South Essex Mental  
Health and Community Care NHS Trust

*There was a paucity of photographs from Laindon, in my view,  
showing the particular defects complained of.*

*I allow only the admitted sum of £950.*



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## Laindon Holdings Limited v South Essex Mental Health and Community Care NHS Trust

*£1000 to remove rust stained slates. In the event I was shown only two photographs, being numbers 4 and 5 at divider 95A, but the circular staining thereon was extremely small and barely visible. I disallow this as de minimis.*



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Laindon Holdings Limited v South Essex Mental  
Health and Community Care NHS Trust

*Brickwork and chipped lintel repairs – There were no photographs at trial to show this and there was no significant cross examination of Mr Blackmore’s view that he could not see it. So I disallow this item.*



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## Laindon Holdings Limited v South Essex Mental Health and Community Care NHS Trust

*Non-matching slates – In evidence Mr Moss accepted it was possible that Laindon had installed these, not South Essex, which is what Mr Blackmore had said. In any event, there are no photographs to show them and I disallow this item.*



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## Laindon Holdings Limited v South Essex Mental Health and Community Care NHS Trust

*Algae staining – “The claim is for removing paint and algae staining to the brickwork.... I preferred Mr Blackmore’s written evidence to the effect that paint and algae could not be found and that Mr Moss could not provide photographs or location. Again I disallow this item.”*



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## Laindon Holdings Limited v South Essex Mental Health and Community Care NHS Trust

*Accordingly, however desirable a check in maintenance inspection may have been, the lack of records in respect of maintenance does not here constitute any breach on the part of the tenant, and I therefore disallow this item entirely.*



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Laindon Holdings Limited v South Essex Mental  
Health and Community Care NHS Trust



## Dilapidations and MEES

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### Landlords?

- Specific repairs – e.g. the boiler
- Building regulations
- Jervis v Harris
- Service Charge
- Licenses for alterations





## Dilapidations and MEES

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### Tenants?

- Look at the contract
- Keep on top of your repairs – don't give the landlord opportunity
- Watch your service charge accounts.



## Principles/Lessons learned (revised?)

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- “Dilapidations” is a claim for damages recoverable at law.
- Any claim could end up in court.
- Plan strategically and well in advance.
- Look at what the contract says.
- A claim for damages needs good quality evidence to succeed.
- Don’t wait until the end of the lease.
- Watch what your landlord is up to.



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