

# The Defective Premises Act

## Even more than it's cracked up to be

If defects appear in a house after completion, the housebuilder may be liable to the purchaser in contract or negligence for the cost of remedying the defects.

However, they will also owe a duty to the purchaser and their successors in title under section 1 of the Defective Premises Act 1972 (the DPA).

The DPA imposes a duty on a person taking on work for, or in connection with, the provision of a dwelling to ensure that the work is done:

1. in a workmanlike or professional manner; and
2. with proper materials; and
3. so that the dwelling will be fit for habitation when completed.

The DPA does not just work against the housebuilder, however, it may also provide the housebuilder with a remedy against its contractors, sub-contractors and consultants.

Of course, the duty under the DPA only applies to work done in connection with a dwelling. **But what exactly is a dwelling?** A single house is a dwelling, but what is the situation with a block of flats? The individual apartments may be 'dwellings' because people live in them, but can the structure of the block and its common parts also be classed as part of a dwelling? This is important because if the 'dwelling' is only the individual apartment, rather than the whole block, then there can be no claim under the DPA in respect of the (often very substantial) costs of remedying defects in the common parts or structure of the apartment block.

A recent Technology and Construction Court (TCC) case, (*Rendlesham Estates Plc and others -v- Barr Limited* [2014] EWHC 3968 (TCC)), provided an answer to this

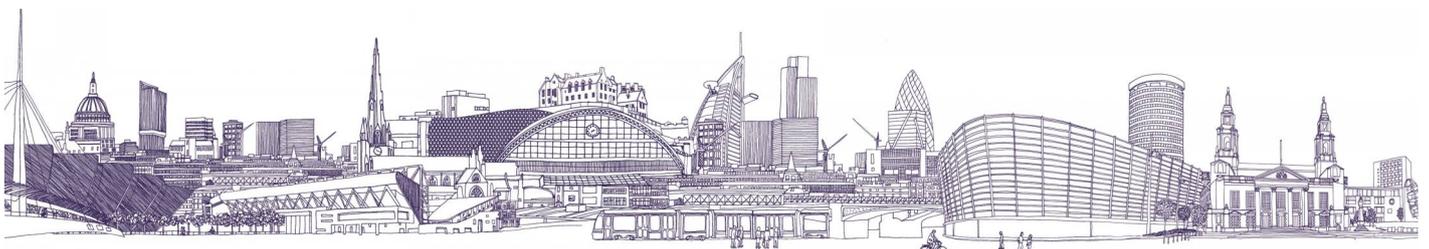
question. Whereas an apartment block cannot be described as a dwelling, work done to the common parts and structure of the block can be classed as work taken on in connection with the provision of a dwelling (i.e. the individual flats). As such, defects to common parts and structure of an apartment block do fall within the DPA.

This decision also confirmed that a dwelling will be 'fit for habitation' within the meaning of the DPA if it is capable of occupation for a reasonable time without risk to the health and safety of the occupants or undue inconvenience or discomfort to them.

The TCC also made the following points, which may mean that the range of defects that render a dwelling unfit for habitation is wider than previously thought:

1. the effect of defects as a whole, rather than individually, should be considered when deciding whether the dwelling is unfit for habitation;
2. the defect does not have to be apparent on completion of the property;
3. the dwelling must be fit for habitation for all classes of people, including children and those with medical conditions; and
4. just because a property has been let does not mean that it is fit for habitation.

In summary, housebuilders should be aware that the ambit of the DPA is wider than they might think, and that it applies to apartment blocks (including their structure and common parts), as well as houses.



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If you would like to discuss any of the issues raised in this update, please contact:



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