Search the Law
RESEARCH REPORT
Powered by Casebound AI
searchthe.law

Research Report

Research Memorandum

Subject: My Landlord Refuses To Fix Damp In My Flat
Jurisdiction: England and Wales
Generated: 16 May 2026

Subject: Tenant's remedies where landlord refuses to remedy damp in a residential flat

Jurisdiction: England and Wales

Statutory Framework

The legal regime governing landlord repairing obligations in residential tenancies operates through four interlocking statutory schemes:

1. **Landlord and Tenant Act 1985, s.11**: Implies into tenancies of dwelling-houses granted on or after 24 October 1961 a non-excludable obligation to keep in repair the structure and exterior of the dwelling, and to keep in repair and proper working order the installations for water, gas, electricity, sanitation, space and water heating. "Dwelling" for these purposes is defined in s.16 LTA 1985.

2. **Landlord and Tenant Act 1985, s.9A** (inserted by the **Homes (Fitness for Human Habitation) Act 2018**): Imposes an implied covenant that the dwelling is fit for human habitation at the commencement of the tenancy and throughout. The 29 statutory factors in s.10 (as amended) expressly include damp, mould growth, and ventilation. The duty applies to tenancies granted or renewed on or after 20 March 2019 (and to periodic tenancies in existence on that date from 20 March 2020).

3. **Environmental Protection Act 1990, ss.79–82**: Damp constituting a "statutory nuisance" (premises in a state prejudicial to health or a nuisance) may be addressed by the local authority by abatement notice under s.80, or directly by the tenant in the magistrates' court under s.82.

4. **Defective Premises Act 1972, s.4**: Where the landlord owes the tenant repairing obligations (or has a right of entry to carry out maintenance), the landlord owes a duty of reasonable care to all persons who might reasonably be expected to be affected, to see that they are reasonably safe from personal injury or property damage caused by relevant defects.

The **Housing Act 2004, Part 1** establishes the Housing Health and Safety Rating System (HHSRS), under which damp and mould growth is a recognised hazard category; enforcement lies with the local authority through improvement, prohibition, or hazard awareness notices.

Leading Authorities

✓ **Grand v Gill [2011] EWCA Civ 554** (Court of Appeal, Civil Division)

- Internal wall and ceiling plaster forms part of the "structure" of a dwelling-house for the purposes of s.11 LTA 1985: the court held it would "accept that the wall and ceiling plaster in Ms Grand's flat formed part of the 'structure' of the flat for the repair of which Mr Gill was responsible" (at [25]).
- "Structure" comprises "those elements of the overall dwelling house which give it its essential appearance, stability and shape" (at [20]).
- Plaster applied to walls and ceilings is "a part of the wall or ceiling upon or to which a decorative finish, of whatever kind, may be applied" — it is itself constructional, not decorative (at [34]).
- Damages may be assessed on a combined basis taking into account both diminution in rental value and discomfort/inconvenience (at [33], applying Wallace v Manchester City Council [1998] 3 EGLR 38).
- However, the court reaffirmed the Quick v Taff Ely BC [1986] QB 809 principle that "a landlord's repairing obligation under section 11 of the Landlord and Tenant Act 1985 did not arise until there was some condition calling for repair" — so damp/mould caused solely by condensation due to design defects, without consequent physical damage, does not engage s.11 (at [9]).

✓ **Liverpool City Council v Irwin [1977] AC 239** (House of Lords) (page references — practitioner verification advised)

- Where the landlord retains control of essential common parts in a multi-occupancy building, there is implied by law, as a legal incident of the tenancy, a duty to take reasonable care to keep those parts in reasonable repair and usability (at p. 256).
- The test for implying such a term is necessity, not mere reasonableness or business efficacy (at pp. 254, 258).
- The implied duty is not absolute: "An obligation to take reasonable care to keep in reasonable repair and usability is what fits the requirements of the case" (at p. 256).
- The predecessor statutory duty under s.32(1)(b) Housing Act 1961 was held to be absolute and to extend to defects arising from faulty design (at p. 261) — a point now carried forward in the wording of s.11 LTA 1985.

✓ **Sykes v Harry [2001] EWCA Civ 167** (Court of Appeal, Civil Division)

- A landlord's duty under s.4 Defective Premises Act 1972 is a duty of reasonable care, not a contractual duty limited by the notice requirements of s.11 LTA 1985 (at [21]–[22]).
- The duty arises where the landlord "ought in all the circumstances" to have known of the defect — a general negligence standard (at [21]).
- The tenant is included within the class of "persons who might reasonably be expected to be affected by defects in the state of the premises", and the duty cannot be contractually excluded (at [22], referring to s.6(3) of the 1972 Act).
- However, contributory negligence may significantly reduce damages: the trial judge in this case would have assessed contribution at 80% where the tenant knew of patent defects yet failed to request servicing or report them (at [24]).

✓ **O'Brien v Robinson [1973] AC 912** (House of Lords) (pinpoints by reference to speaker; practitioner verification advised)

- A landlord's statutory repairing obligation is contractual, not tortious: "The landlord's obligation lies in the field of contract not of tort. His duty is not one of reasonable care to avoid injury to the tenant" (per Lord Diplock).
- The duty arises only upon notice of the defect (whether actual or notice of facts putting the landlord on enquiry); the landlord is not liable for latent defects of which he had no notice (per Lord Morris; per Lord Diplock).

- A repairing covenant is an obligation to do work of repair when disrepair occurs, not an absolute guarantee that the premises will never fall into disrepair (per Lord Diplock).
- A tenant's complaint about future risk of damage, without indicating an existing structural defect, does not constitute sufficient notice (per Lord Diplock).

Legal Framework Analysis

The authorities establish a layered framework offering the tenant three substantive routes, each with distinct doctrinal requirements.

The primary contractual route — s.11 LTA 1985. The scope of "structure" was significantly broadened in Grand v Gill, where the Court of Appeal held that internal plaster falls within the s.11 obligation (at [25]). This is particularly material in damp cases, because saturated, blown, or fractured plaster is among the most common physical manifestations of damp ingress. Where damp has caused such damage, the landlord's duty under s.11 is engaged, subject to notice. However, the reactive nature of the duty, as affirmed in Grand v Gill at [9] (citing Quick v Taff Ely BC), means that pure condensation damp caused by inherent design defects — without consequent physical disrepair — falls outside the section.

The statutory fitness route — s.9A LTA 1985. The 2018 amendment is designed in significant part to address the Quick v Taff Ely lacuna. By making damp, mould, and ventilation expressly relevant to fitness, s.9A captures condensation damp that would otherwise escape s.11. The s.9A regime is, however, jurisdictionally newer and there is less appellate authority on its scope.

The tortious route — s.4 DPA 1972. Sykes v Harry establishes a doctrinally distinct route under which the tenant need not establish contractual notice; the test is whether the landlord "ought in all the circumstances" to have known of the defect (at [21]–[22]). This is significant because damp claims frequently involve health impacts (respiratory illness, mould sensitisation) that bring personal injury within the scope of s.4.

Tension between O'Brien v Robinson and Sykes v Harry. The two House of Lords/Court of Appeal authorities operate on different doctrinal premises. O'Brien v Robinson (per Lord Diplock) requires notice as a contractual precondition; Sykes v Harry expressly identifies and resolves the divergence by holding that "the judge was in error in equating the task of the claimant, as tenant, in establishing a breach of duty under s.4 of the 1972 Act, with his need under s.11 of the 1985 Act to demonstrate notice" (at [22]). Practitioners must therefore plead contractual and statutory tortious claims distinctly, with the s.4 claim providing a notice-independent route where injury results.

Common parts and Liverpool v Irwin. Where damp ingress originates in common parts (a leaking communal roof, faulty rising main, shared gutters, an upstairs flat for which the landlord retains responsibility), the Irwin implied duty of reasonable care to maintain those parts is engaged (at p. 256). This is critical in the context of flats, where damp frequently originates outside the demised premises.

Arguments & Counter-Arguments

Tenant's arguments:

1. *Section 11 LTA 1985 engagement*: Where damp has caused damage to plaster, brickwork, joinery, or roof structure, the s.11 duty is triggered. Grand v Gill confirms that "the disrepair of the damaged plasterwork meant that Mr Gill was in that respect in breach of his repairing obligations" (at [26]).

2. *Section 9A LTA 1985 engagement*: For tenancies post-dating 20 March 2019, the fitness covenant operates independently of physical disrepair and expressly captures damp and mould.

3. *Section 4 DPA 1972 claim*: Where occupants suffer health effects, the s.4 duty applies without proof of contractual notice (Sykes v Harry at [21]–[22]) and cannot be excluded by contract (at [22]).

4. *Common parts liability*: Where damp originates in a common part, the Irwin implied duty engages (at p. 256).

5. *Notice has been given*: An express request to repair, followed by refusal, constitutes notice for s.11 purposes (consistent with O'Brien v Robinson, per Lord Diplock).

Landlord's counter-arguments:

1. *Quick v Taff Ely defence*: If the damp is condensation arising from inherent design (poor insulation, cold-bridging, inadequate ventilation), and there is no physical damage to the structure, s.11 is not engaged (Grand v Gill at [9]).

2. *Absence of pre-refusal notice*: Where the landlord can demonstrate that he was unaware of the defect prior to complaint, no breach arises for the antecedent period (O'Brien v Robinson, per Lord Diplock).

3. *Contributory negligence under DPA 1972*: A tenant who fails to report patent defects, fails to ventilate, or otherwise contributes to the conditions faces potentially significant reductions; Sykes v Harry contemplated 80% contribution where the tenant knew of risks (at [24]).

Risk Assessment

Causation risk: The principal evidential challenge in damp cases is distinguishing penetrating or rising damp (squarely within s.11 per Grand v Gill at [25]) from condensation damp (potentially outside s.11 per the Quick v Taff Ely line preserved at [9]). Independent surveyor evidence is critical. For post-2019 tenancies this is mitigated by s.9A.

Notice risk: For s.11 claims, the tenant carries the burden of establishing notice (O'Brien v Robinson, per Lord Diplock). A tenant who relies on inference rather than documented written notice exposes the claim to dismissal for the pre-notice period.

Contributory negligence risk: Sykes v Harry illustrates that occupant conduct (failure to ventilate, failure to report, contribution to moisture levels) may attract substantial reductions in DPA 1972 claims (at [24], where 80% was contemplated).

Limitation risk: Six years for contractual claims; three years for personal injury claims under DPA 1972 (Limitation Act 1980). The recurring character of damp may give rise to a fresh cause of action for each successive period of disrepair, though this is fact-dependent.

Quantum risk: Damages assessed under the Wallace v Manchester framework (referenced in Grand v Gill at [33]) yield modest sums for inconvenience-only claims absent significant property damage or quantified health effects.

Current Position

The law affords the tenant a multi-pronged remedy structure:

1. Where damp has caused physical damage to the structure (including plaster per Grand v Gill at [25]), s.11 LTA 1985 imposes a duty to repair, conditional on notice (O'Brien v Robinson).

2. For tenancies post-dating 20 March 2019, s.9A LTA 1985 provides a broader fitness duty that captures condensation damp.

3. Where personal injury or property damage results, s.4 DPA 1972 provides a tortious claim independent of contractual notice (Sykes v Harry at [21]–[22]).

4. Damp originating in common parts engages the implied duty in Liverpool v Irwin (at p. 256).

5. The local authority HHSRS regime under the Housing Act 2004 provides a parallel enforcement route.

The principal residual uncertainty is the contemporary application of the Quick v Taff Ely line to condensation damp claims under s.11; this is substantially mitigated for post-2019 tenancies by s.9A but remains relevant for older fixed-term tenancies still subsisting.

Practical Implications

In practice:

1. **Written notice**: The tenant should put any complaint in writing with photographs and dates. This establishes notice for s.11 purposes (O'Brien v Robinson, per Lord Diplock) and creates a contemporaneous evidential record.

2. **Independent surveyor evidence**: A damp survey is essential to distinguish penetrating/rising damp (clearly s.11 per Grand v Gill at [25]) from condensation (potential Quick v Taff Ely difficulty per Grand v Gill at [9]).

3. **Pre-Action Protocol for Housing Conditions Claims (England)**: Compliance is required before issue; non-compliance may attract costs sanctions.

4. **Remedies**: Specific performance (uncommon), damages on the Wallace v Manchester basis (Grand v Gill at [33]), set-off against rent (subject to Lee-Parker v Izzet principles), and injunctive relief where appropriate.

5. **Parallel local authority complaint**: Notification to environmental health under the EPA 1990 or Housing Act 2004 HHSRS regime may apply regulatory pressure parallel to civil proceedings.

A **Full Brief** on this query would provide: a quantum modelling table under the Wallace v Manchester framework with comparator awards; a detailed pre-action protocol checklist; an argument template for distinguishing Quick v Taff Ely in the contemporary condensation context; and an updated analysis of s.9A LTA 1985 first-instance and appellate authority since 2019.

Scope & Limitations

This memorandum does not cover the following matters, on which independent research is advised:

- **Tenancy type and security of tenure**: Whether the tenancy is an assured shorthold, assured, secure (local authority/housing association), or excluded affects the protections against retaliatory eviction under s.33 Deregulation Act 2015 and the procedural framework for any counter-claim.
- **Limitation and pre-action protocol compliance**: The Pre-Action Protocol for Housing Conditions Claims imposes detailed pre-issue steps; the interaction between limitation under the Limitation Act 1980 and recurring disrepair has not been addressed.
- **"Awaab's Law" and Social Housing (Regulation) Act 2023**: Recent legislative developments impose specific time-limits on social landlords to address damp and mould; the secondary legislation bringing s.10A LTA 1985 into force has been progressing and may apply depending on the landlord's status.
- **Local authority HHSRS enforcement procedure**: The methodology for hazard rating, the categorisation of damp and mould as Category 1/2 hazards, and the improvement/prohibition notice procedure under Housing Act 2004 Part 1 are a separate practitioner specialism.

- **Quantum and special damages**: Detailed assessment of general damages (Wallace v Manchester bands), special damages, and personal injury damages for mould-related illness requires further expert and comparator-based research.

Note on excluded authorities: Tillman v Egon Zehnder Ltd [2019] UKSC 32, Herbert Morris Ltd v Saxelby [1916] 1 AC 688, Société Générale v Geys [2012] UKSC 63, General Billposting v Atkinson [1909] AC 118, and Nordenfelt v Maxim Nordenfelt [1894] AC 535 were retrieved but excluded as they concern restraint of trade and employment law, not housing disrepair. American Cyanamid v Ethicon [1975] AC 396 and Lansing Linde v Kerr [1991] 1 WLR 251 were retrieved but excluded as the principles concern interim injunctive relief in commercial contexts, and were not the focus of this query (although the American Cyanamid framework would apply to any interim injunction sought to compel works).

Search the Law

DISCLAIMER & ACKNOWLEDGEMENTS

Powered by Casebound AI

searchthe.law

Crown Copyright Acknowledgement

The case law available through this platform only partially represents the activities of the courts and tribunals of the United Kingdom.

Disclaimer

This document has been generated by automated research tools to assist in locating and organising relevant case law. It does not constitute legal advice and should not be relied upon as a basis for legal decisions without independent professional review.

The content reflects information extracted from published court judgments and tribunal decisions. All citations, legal propositions, and paragraph references should be independently verified against the original judgment text, which remains the sole authoritative record.

Statutory references are subject to amendment and should be checked against current legislation.

Use of this document is subject to the full terms of service at searchthe.law/terms.

About This Document

This Research Report was generated by the Search the Law platform (searchthe.law), powered by Casebound AI. The platform provides legal research tools that locate, organise, and cross-reference published court judgments and tribunal decisions. All authorities cited in this document are grounded against verified judgment texts, with paragraph-level references linking to the original judgments where available on caselaw.nationalarchives.gov.uk.

This document has been intentionally branded to ensure it cannot be mistaken for an official court document or legal opinion.