

Allocation to track when enforcing disrepair settlements

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Allocation following breach of settlement

1. The purpose of the Pre-Action Protocol for Housing Conditions Claims (the “Protocol”) is made clear in its preamble: It is intended to encourage the exchange of information between parties at an early stage and to provide a clear framework within which parties in a housing conditions claim can attempt to achieve an early and appropriate resolution of the issues. Indeed, the protocol has brought about many early settlements.
2. Nonetheless, landlords will not infrequently find themselves in a position where, having agreed to perform repairs and pay damages – perhaps pursuant to an agreed Tomlin Order - their tenant then alleges that agreed works have either not been completed within the time specified, or that they have not been completed to a satisfactory standard. Where the landlord alleges that works have been completed satisfactorily, the issue of allocation becomes live.
3. These were the circumstances in a recent appeal case on which the author was instructed: *S v HA*.
4. *S* alleged that, while *HA* had completed some works, others remained outstanding. Additionally, of those works that had been completed, a number of items fell short of the repairing standard required of the *HA*. *S* issued a claim under the Part 8 procedure.
5. *HA* responded to the claim, suggesting that all works had been completed, and to the requisite standard.
6. Due to the substantial dispute of fact, it was agreed between parties that the matter ought be transferred to the Part 7 procedure. An allocation hearing was therefore listed.

Allocation arguments at first instance

7. At first instance, *S* directed the court to r.26.9(1)(b), which will be familiar to all housing practitioners:

26.9.—(1) *The small claims track is the normal track for—*

(b) any claim which includes a claim by a tenant of residential premises against a landlord where—

(i) the tenant is seeking an order requiring the landlord to carry out repairs or other work to the premises (whether or not the tenant is also seeking some other remedy);

(ii) the cost of the repairs or other work to the premises is estimated to be not more than £1,000; and

(iii) the value of any other claim for damages is not more than £1,000

8. S suggested that all three limbs of the rule were unsatisfied. S was seeking an order of specific performance, and it was reasonably likely that the cost of repairs and the value of the damages claim exceeded the £1,000 threshold respectively. Accordingly, S invited the court to allocate the matter to the Fast Track (“FT”).
9. HA suggested that r.26.9(1)(b) was not instructive in the usual way. S’s cause of action arose from an alleged breach of a compromise agreement and, therefore, was not subject to the usual rules governing housing conditions claims. Instead, the court was invited to assess allocation as it would in any usual breach of contract claim; it was highlighted that the Small Claims Track (“SCT”) could accommodate claims of up to £10,000 and the court was invited to allocate the matter to the SCT.

First instance decision

10. The Deputy District Judge (“DDJ”) hearing the case looked to the Claim Form in her consideration of the competing positions which stated that *“The court is invited to determine that the Defendant is in default of the agreement between the parties”*. DDJ remarked that, on their reading of the Claim Form, the matter was a ‘breach of contract’ case rather than a housing disrepair claim, as it invited the court to determine the default of the compromise agreement between parties, to make an order compelling performance of that contract and requiring damages to be paid for the breach of the same.

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11. DDJ considered that the existence of the compromise, as well as the manner in which the case was pleaded, indicated that the matter was not captured by the provisions of r.26.9(1)(b). Accordingly, the question of allocation fell under the usual principles - and there was no dispute that the financial value of the claim fell well below the £10,000 mark.

12. DDJ declined to further engage with r.26.9(1)(b) and allocated the matter to the SCT.

Arguments on appeal

13. While permission to appeal was refused at the lower court, a written application for permission was made and subsequently granted by the Designated Civil Judge ("HHJ").

14. S appealed on the primary ground that DDJ erred in law when finding that r.26.9(1)(b) did not apply to 'breach of contract claims'. S suggested that:

- a. the matter remained a disrepair claim and did not become a 'breach of contract' claim merely by the existence of the compromise. Indeed, all disrepair claims are appropriately categorised as 'breaches of contract';
- b. the CPRs do not provide any distinction between such categories of claim and as such, the broad classification of 'breach of contract claims' was wrong in law;
- c. the plain language of r.26.9(1)(b) clearly applied to the facts of S's case;
- d. even were there a requirement under r.26.9(1)(b) that a matter be labelled a 'disrepair' claim, the present case comprises issues which largely mirror those in any disrepair claim;
- e. it was nonsensical to suggest that the intention of r.26.9(1)(b) was that landlords could settle claims, breach the term of their agreements, and avoid the allocation consequences within that rule. Such creates an incentive for landlords to breach their compromises;
- f. the Protocol is applicable to S's case and indeed had been followed to the date of the compromise.

15. HA opposed the appeal as follows:

- a. the court's focus ought to be on the legal basis of the claim as it exists when it is brought before the court rather than its historical origins. The existence of the compromise created new and freestanding contractual obligations and S's right to enforce those obligations arose as a result of the contract itself. Therefore, the existence of the compromise altered the legal character of the claim;
- b. the existence of the compromise had narrowed the scope of the claim substantially by limiting the matters in issue to whether or not HS had effectively performed their obligations within it. For example, there would be no consideration at trial of HA's statutory obligations, obligations under the Tenancy Agreement, or whether any items fall within the legal definition of 'disrepair' and so on;
- c. the Protocol and r.26.9(1)(b), properly construed, refer to claims where disrepair is the substantive issue to be adjudicated, rather than merely being part of the factual background;
- d. parties frequently settle disputes arising from one cause of action and replace them with obligations of a different nature. Permitting S to recharacterise enforcement proceedings in a breach of compromise claim by reference to the original dispute undermines the finality and legal effect of settlements between parties;
- e. the use of the term 'breach of contract claim' by DDJ was a matter of imperfect language and nothing more. It was clear that DDJ's intention was not to encapsulate all such claims, but rather to refer to the distinct legal basis for the present claim.

The appeal court's decision

16. HHJ considered that DDJ erred when determining that the claim did not fall within r.26.9(1)(b).

17. HHJ found that the natural reading of the rule indicates that it is clearly intended to encapsulate the factual matrix of the present claim. There can be no dispute that S is a tenant making a claim against HA, a landlord, and S sought an order requiring HA to carry out repairs which, pursuant to the compromise agreement, HA had agreed to carry out.

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18. Although HHJ considered that it was not necessary to look beyond the natural language of r.26.9(1)(b), HHJ found that there was further support for this judgment in that the claim had begun as a normal disrepair matter.
19. The Letter Before Action sent pursuant to the Protocol made clear that the intended claim was one for an alleged breach of tenancy-related obligations. It listed the alleged disrepair at the property, it set out how it was alleged that the disrepair occurred, and it suggested that parties engage an expert to assist with resolution of the claim.
20. HHJ considered that it was HA's choice to come to a compromise agreement and, as such, it should not be open to HA to breach that agreement and subsequently argue that the matter ought to be allocated to the SCT on the basis that it was no longer a disrepair claim.
21. While HHJ accepted that issues, such as whether or not various items of disrepair fell within repairing covenants and notice, would not be matters of concern for the trial court, that court will nonetheless undertake almost all of the same considerations as they would have if the claim were not compromised. At trial, factual and expert evidence will be required as to what repairs were carried out and the quality of those repairs. The trial court must also hear evidence as to the losses caused if it is determined that there has been a breach of the compromise agreement.
22. For those reasons, HHJ considered that it was not the intention of r.26.9(1)(b) to exclude those claims where a tenant sought to enforce a compromise agreement.
23. Accordingly, HHJ allowed the appeal.
24. The matter of allocation was re-opened on appeal and dealt with by HHJ as a matter of proportionality. HHJ re-allocated the claim to the FT.

Conclusion

25. This appeal provides useful clarification for practitioners grappling with allocation in the context of alleged breaches of compromise agreements in housing conditions claims. The decision confirms that the court will look to the substance and factual matrix of the dispute, rather than its procedural posture or the mere existence of a settlement, when considering the application of r.26.9(1)(b).
26. It is clear that a claim does not lose its essential character as a housing disrepair matter simply because it is framed as enforcement of a compromise. Importantly, the judgment avoids creating

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an artificial distinction that could incentivise non-compliance with settlement terms and undermine the purpose of the Protocol.

27. Practitioners should therefore be mindful that, where the underlying issues remain rooted in disrepair and require similar factual and expert determination, the allocation provisions applicable to such claims are likely to continue to apply notwithstanding the presence of a compromise.



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Law is correct as of 16/09/2026

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