Notice of Allocation to the Fast Track

In the County Court at Yeovil	
Claim Number	L00YE173
Date	5 February 2025

MRS CHERYL CAWLEY & MR BARRY CAWLEY	**1st Claimant** **Ref** 133781.001
ABRI GROUP LIMITED	**1st Defendant** **Ref**

District Judge Bosman has considered the statements of case and directions questionnaire filed, and allocated the claim to **the fast track.**

JUDGMENT

THE APPLICATION.

1. The matter before me is the Defendant's (hereafter "Abri") Application Notice dated 31 July 2024. That application seeks the following:

(1) an order for summary judgment in respect of part of the Claimants' claim pursuant to CPR Part 24.2(a), specifically its claim for an order for Specific Performance; and/or in the alternative
(2) an order that the procedural progress of this matter be stayed pursuant to CPR Part 3.1(2)(f), specifically to enable the parties to attempt to resolve the dispute by means of Abri's Internal Complaints Procedure.

2. The application was listed before me on 30 December 2024 by MS Teams. Both parties were represented by Counsel; the Applicant/Defendant was represented by Mr Wightwick, the Respondents/Claimants were represented by Mr Finlay.

3. In advance of the hearing both Counsel had prepared very full written submissions which I had the opportunity to review beforehand. I had an opportunity to review part of the content of the agreed hearing bundle which ran

Notes:
- You and the other party, or parties, may agree to extend the time periods given in the directions
  except
  - where a rule, practice direction or court order requires a party to comply with a direction within a specified time **and** specifies the consequences of failing to comply;
  - where an extension of time will affect the date given for returning the pre-trial checklist or the date of the trial or trial period
- If you do not comply with these directions, any other party to the claim will be entitled to apply to the court for an order that your statement of case (claim or defence) be struck out.
- Leaflets explaining more about what happens when your case is allocated to the fast track are available from the court office or online at https://www.gov.uk/government/publications/small-claims-track-fast-track-and-multi-track-ex305-and-ex306 and search for leaflet EX305.

to 250 pages. Time constraints did not enable me to review the 85 page bundle of authorities as prepared and filed by Wightwick.

4. Having regard to my pre-reading, and noting, inter alia, the indications that the issues raised in this case have or may have much wider implications, I made clear at the outset of the hearing that it was my intention to deliver a concise written judgment shortly following the conclusion of the hearing after I had had a proper opportunity to carefully read and reflect upon all of the content of the agreed hearing bundle and the various authorities and documents to which I was referred.

5. In the course of my post-hearing reading I called for Mr Wightwick (as the Applicant's Solicitors were responsible for the preparation and circulation of the agreed hearing bundle) to provide to me a copy of the Claimants' Solicitor's Letter of Claim dated 15 November 2023. That document was referenced throughout the agreed hearing bundle including in the Particulars of Claim and presented to me as being of some importance. My initial conclusion was that it had been inadvertently omitted from the hearing bundle.

6. For reasons unclear, Mr Wightwick did not, as requested, provide a copy. Mr Finlay did.

THE MATERIAL BACKGROUND.

7. The property the subject of this dispute is 35 West Street, Templeton, Somerset ("the property"), let originally by Yarlington Housing Group ("Yarlington") to Mr & Mrs Cawley in July 2006.

8. The property, when let, had seemingly been subject to an extension or extensions to the rear which at this time Abri asserts was/were constructed by or at the behest of Mr & Mrs Cawley's predecessors and was/were unauthorised (as best as I can ascertain, the only relevance that might properly be attributed to that label is that neither Yarlington nor Abri knew for sure the detail/specification of the construction of the rear extension(s)).

9. It is the rear extension(s) which is/are the focus of this application.

10. It is seemingly common ground that Abri assumed the responsibilities of Landlord in June 2021 as a result of a formal Transfer of Engagements.

11. With that assumption of responsibilities Abri inherited a record of notifications of issues and disrepair concerns and complaints expressed by Mr & Mrs Cawley dating back to 2009.

12. The documentation before me reveals a long history of notification of issues and disrepair concerns and complaints by Mr & Mrs Cawley; for most of the time to Yarlington and since 2021 to Abri.

13. The Particulars of Claim, paragraph 7, set out very many instances of alleged notification of disrepair and complaints, in particular by sub-paragraph III; the detail seemingly reflecting the content of the pre-action disclosure material which I conclude was, at some time, made available to the Claimant's Solicitors by Abri.

14. Abri's records (as reflected in the Particulars of Claim) show concerns being expressed and complaints being made by Mr & Mrs Crawley regarding dampness and associated issues affecting the rooms formed by the rear extension(s) dating back to 2015 and Yarlington's and then Abri's failure to deal with matters effectively or timeously. The following is a fair summary (for present purposes I do not go into the full or fine detail).

- # In January 2015 Yarlington were made aware of damp issues detrimentally affecting the rear extension(s) and Mr & Mrs Cawley's belief that previous drylining works undertaken had not resolved the damp problems. Yarlington were also aware from at latest January 2015 that the rear extension(s) was used by Mr Cawley as a bedroom because he could not get upstairs;
- # In June 2020 Abri's records seemingly show that some of the floorboards within the extension(s) had rotted and snapped;
- # In December 2022 there are a series of further communications regarding ongoing damp issues affecting the property none of which at that time or previously are seemingly attributed to a leaking roof;
- # In January 2023 Abri's records evidence an awareness of problems of a seemingly new nature affecting the main roof space within the property and with water leaking through the roof(s);
- # In July 2023 Abri's records read as follows – "… Res has rising damp in the bedroom of her terminally ill husband – Carpet is wet, floorboards are wet, thinks it is coming through the wall, …" . Abri's response was seemingly to recommend shaving the internal doors, encourage other steps to increase airflow within the property and call upon Mr & Mrs Cawley to purchase and use a dehumidifier to see if that resolved the issues inferentially attributing the damp conditions and other related symptoms to condensation within the property;
- # Seemingly by mid-August 2023 Abri had arranged for the property to be inspected by a Surveyor who made recommendations, seemingly not communicated to Mr & Mrs Cawley or implemented;
- # In September 2023 Abri's records indicate an intention to appoint Cedar "to inspect the possible rising damp". It seems Cedar never attended in response to Abri's September invitation;
- # In October 2023 Mr & Mrs Cawley make clear to Abri their dissatisfaction with the longstanding damp conditions and warn that absent a resolution they will feel it necessary to escalate matters. Mrs Cawley also seemingly alerts Abri to water now leaking through the roof to the extension adding to the dampness and associated issues within the rear extension;
- # In early November 2023, Abri's representative attended the property, noted the dampness/wet conditions affecting the rear extension(s), identified a leak from the roof above the extension(s) seemingly then leaving it with Mr & Mrs Crawley to use their humidifier "… to see if this improves the situation greatly and report back otherwise arrange for the work to take place.";
- # More generally, there is a long history of dampness affecting the rear extension(s) and of the existence and recurrence of mould, rot to floor timbers and also repeated washdowns of surfaces to control that mould growth/the associated spores;
- # The first indication of water ingress/dampness attributable to issues with a leaking roof appear in early 2023.

15. The Particulars of Disrepair and/or Unfitness For Human Habitation pleaded include the following:

    a) "Mould and elevated moisture readings in the dining room which is utilised as a bedroom" [the rear extension(s)]

    b) "Rising Damp caused by water penetration from raised air bricks and compromised DPC;

    c) Defective and spoiled render allowing dampness to penetrate;

    d) …"

16. The Particulars of Claim, inter alia, plead (paragraph 12), as follows:

    "As the property remains in disrepair/unfit for human habitation, the Claimants seek an order for specific performance … relying on the Scott Schedule annexed to the aforementioned surveyors report in respect of the remedial works required."

17. The report referred to is Mr Smit's report dated 21 December 2023 a copy of which was appended to the Particulars of Claim and appears within the agreed hearing bundle commencing at page 25.

THE APPLICATION FOR SUMMARY JUDGMENT.

18. I have read carefully all that is detailed within both Mr Wightwick's and Mr Finlay's lengthy written skeletons and listened carefully to what each had to say during the course of the hearing raising questions along the way.

19. I have also had regard to CPR Part 24 and the Notes therein and the various authorities referenced.

20. As a preliminary, I note that the application refers to and is made pursuant to "CPR Part 24.2(a)". Plainly, that is not enough. The Court may only give summary judgment where both the requirements of CPR 24.2(a) and (b) are satisfied. However, given that within Box 3 of the N244, Abri goes on to reference the requirement of sub-paragraph (b), the application is capable of being construed as effective and that is my conclusion.

21. Mr Finlay asserts that CPR Part 24 does not permit the Court to determine summarily the Claimant's entitlement to the remedy of an order requiring specific performance of Abri's obligations under the tenancy agreement.

22. It is common ground that this question is to be answered having regard to the proper meaning of the words "particular issue" as they appear within CPR Part 24.1

23. Mr Wightwick drew my attention to CPR Part 24.4, which although concerned with the time for making applications for summary judgment deploys wording which specifically and clearly accommodates claims for order for specific performance.

24. The referenced passages within CPR 24.4 reflect the October 2023 revocation of what had been PD 24, most relevantly paragraph 7 thereof which had specifically and clearly accommodated proceedings which included claims for specific performance being determined summarily in appropriate cases and the adoption of the former PD provisions into an amended Part 24. Those amendments, in my judgment, make clear that the availability of a remedy of specific performance is intended to and does fall squarely within the meaning of the words "particular issue" as they appear within CPR Part 24.1.

25. The application before me is specifically directed at the Claimants' claim for the equitable remedy of an order for specific performance in respect of the 4 items for remedial works described below (as I have articulated them).

26. Determining the application necessitates careful consideration of the evidence relevant to the alleged breach(s) and more importantly what if anything in the way of remedial works or further remedial work(s) is required to remedy the alleged breach(s) as available at this time and perhaps also as may be available at trial.

27. The essence of the argument Mr Wightwick advances is that Abri asserts that, save in one minor respect, it has carried out all of the remedial works that it considers are necessary and thus there are no further remedial works required which can or do properly attract the attention of the claim for an order for specific performance. With regard to the minor item, the repainting of the external render to the rear extension(s) it is said that given Abri's assurance that the repainting will be attended to sometime in 2025, it is unnecessary to and there is no realistic likelihood that a Court would order specific performance of the re-painting obligation (even assuming that it remained unattended to at the date of trial).

28. Mr Wightwick's skeleton comprehensively summarises the relevant law and the considerations that I am required to apply in relation to the claimed availability, at trial, of the remedy of an order for specific performance and the proper application of the test to be applied in this application for summary judgment by Abri. I do not therefore repeat what has already been carefully detailed and with which no material issue is taken by Mr Finlay.

The Parties Respective Investigations of the Alleged Disrepair and the Remedial Solutions Considered Necessary.

29. As stated above, on 20 November 2023 Abri instructed Mr Walker to inspect the property and prepare a report. That report, dated 1 December 2023, appears within the agreed hearing bundle commencing at page 72. It describes itself as a Part 35 compliant report. I have reservation regarding Mr Walker's impartiality and suitability to act as an expert witness as he is directly employed by Abri. That said, I do not allow that reservation to colour my assessment of the content of his report for the purposes of this application.

30. Mr Walker's report records the following, relevant to matters before me:

> "**Inspection Outcome** – I inspected externally and found the DPC to be above ground level however the air bricks had been filled with silicone which blocked up the air bricks and have restricted air flow to the underneath of the dining room floor.
> The external walls to the dining room have been previously drylined but this does not appear to have resolved the issue in this room."
> "**Works Required** – Investigate walls. Investigate the high damp readings in the chipboard flooring. ... Open up the airbricks ....Redecorate external walls of dining room with magnolia emulsion."
> "**Causations** – This will require further investigation ... and water ingress under the dining room floor"
> "**Conclusion** – In my view the property meets the 'Decent Homes Standard' and is not in a state of disrepair and the property is fit for human habitation. However, I would recommend the following works to the dining room and level access shower room, this will enable these rooms to be used to their full potential safely and securely in the future: ..."

31. There are a number of photographs appended to Mr Walker's report.

32. On 14 December 2023, just prior to the expiry of the 20 working day period within which Abri ought to have sent a Letter of Response, Mr Smit, a Surveyor, inspected the property for the purposes of preparing a Part 35 compliant expert witness report on behalf of Mr & Mrs Cawley. He attended alone. His report dated 21 December 2023 appears within the agreed hearing bundle commencing at page 25.

33. Absent permission having been given by Abri to accommodate the possibility of Mr Smit undertaking opening up works, if considered necessary, he was constrained to undertake a visual only inspection.

34. Mr Smit's report records the following, relevant to matters before me:

> "**Findings** – .... The external air bricks for the suspended timber floor is at ground level, which can allow water to enter the sub floor void and result in internal dampness. ... rising damp is likely due to water penetration from raised air bricks and a compromised damp-proof course. There is defective and spoiled render to the external walls, which may allow dampness to penetrate. ... internal walls have been dry lined, which may be concealing dampness to walls and may have been installed to hide the appearance of damp. It may also contribute towards damp in the floor.
> "**Remedial Works** – Inject silicone damp proofing externally, including making and repointing brickwork. Excavate earth to lower ground levels .... Hack off existing defective wall render, clean down and re-render. Thoroughly prepare external wall surfaces and redecorate with masonry paint. ..."
> "**CONCLUSIONS** – 3.4 - I find the landlord is in breach of its duty to ensure the property is and will remain fit for human habitation during the term of the tenancy ...".

35. The above is effectively replicated in the Scott Schedule comprising Appendix 1 to Mr Smit's report.

36. There are a number of photographs appended to Mr Smit's report but the quality of the reproduction in the document made available to me is poor and that is unhelpful.

37. Plainly there are matters of common ground between Mr Smit and Mr Walker regarding, perhaps most importantly, rainwater entering the rear extension(s) through the defective roof.

38. Plainly also there are significant differences between these gentlemen regarding whether, in addition to water entering the structure of the rear extension(s) through the defective roof, there is also water entering through and/ or up the external walls and also penetrating and accumulating in the sub floor void. In consequence there are material differences of opinion as to the nature/extent of the remedial works required.

39. I observe as follows:

- # Both gentlemen acknowledge that the observed moisture levels in the face of the internal drylining were essentially misleading and likely to be unreflective of the moisture levels in the walls behind the dry lining;
- # Mr Walker made clear a need to investigate further the walls, specifically the reason(s) for the high moisture levels causing the floor timbers to have rotted. This clearly accommodated the possibility of rising and/or penetrating dampness affecting the external walls as per Mr Smit's conclusion. I have seen no evidence that Mr Walker has pursued further his identified need for further investigation;
- # The photographs taken by Mr Walker and appended to his report (pages 89 -91) clearly show deterioration of the external paint to the rear extension(s) and discolouration of the underlying render primarily at low level, features in my experience likely to be consistent with higher moisture lower in the rear wall(s) than at higher level (the photographs at pages 124, 125, 126, 127 and 248-250 show this even more clearly);
- # The photographs taken by Mr Walker and appended to his report do not show cracking to the external render to the rear extension(s) and those appended to Mr Smit's report (as copied) are poor quality. However the photographs at pages 247 and 250 of the agreed hearing bundle very clearly show cracked and defective render as described by Mr Smit ("defective and spoiled render to the external walls");
- # Mr Walker reported in December 2023 that the DPC is "above ground level". He does not identify the nature of the DPC, the condition of the DPC, its effectiveness nor how far above ground level it was located. In contrast, when writing to Abri's Solicitor on 19 December 2024 Mr Walker reported as follows "the ground level directly outside the room was level with the damp proof course, ..."
- # It is clear from the photographic evidence within the agreed hearing bundle that the ground adjacent to the rear extension(s) is not general ground level but is a reduced ground level presenting a risk if not likelihood of rainwater accumulations at times of heavy rainfall and the flooding of that accumulation through the very low level airbricks perhaps into the base of the wall and also the sub floor void. A DPC positioned close to the ground, also presents a risk that splashing will subvert the effectiveness of an otherwise intact membrane operating as a DPC and it is therefore clearly to be accommodated that there is a need for a chemical DPC at a higher level that the existing DPC;
- # Mr Walker recorded as follows – "... the air bricks had been filled with silicone which blocked up the air bricks and have restricted air flow to the underneath of the dining room floor ...". Whilst what is said seems likely to be correct, he does not seem to acknowledge or identify that whoever applied the silicone may have done so specifically to prevent rainwater accumulations entering the sub floor void through the air bricks;
- # I find it difficult to reconcile Mr Walker's conclusion that the property was "... not in a state of disrepair ..." with the nature and extent of the remedial works that he recommends;

40. In support of this application Abri has, in addition to the expert report of Mr Walker, served and relies of reports from Mr Roberts, also a Surveyor employed by Abri and expressed to be Part 35 compliant.

41. I do not understand why any party to litigation, represented by Solicitors, should think that it is at all appropriate to seek to rely on expert evidence from two individuals who possess the same expertise. On any view, it would have been appropriate for Abri to have secured any necessary further/updating reports from Mr Walker and not from Mr Roberts.

42. Properly assessed, there is little that Mr Roberts has to say which is opinion evidence. Rather, his role of importance is essentially confined to reporting that the remedial works advised as necessary by Mr Walker had been completed. Interestingly;

- # Mr Roberts' March 2024 report, somewhat at odds with Mr Walker's conclusion, opines that following the completion of the remedial works the property ".. now fully meets the 'Decent Homes Standard' and is not in a state of disrepair."
- # Mr Roberts' December 2024 report, whilst generally supporting Mr Walker references the following "the causation of the dampness was as a result of the issues with the roofing structure and drainage at the rear of the property" – the latter matter is not mentioned by Mr Walker.

Analysis.

43. It is plain and obvious that Mr Smit and Mr Walker offer different opinions as to the causes of the damp conditions long affecting the rear extension(s).

44. Unsurprisingly, it is also plain and obvious that they offer different opinions as to the remedial works properly required.

45. Mr Walker's opinion is that given that the remedial works that he recommended following his inspection in November 2023 (save for the re-painting that he recommends) have been completed no further remedial works are required.

46. Whilst it can certainly be said that the alleged outstanding works of repair that Mr Smit considered necessary are not pleaded with the particularity that I would prefer to read, it has at all material times following receipt by Abri of a copy of Mr Smit's report been clear that Mr & Mrs Cawley were calling for the following works to be carried out by Abri to properly and permanently redress the allegedly unsatisfactory conditions affecting the property and Mr & Mrs Cawley's lives living in the property:

1. The injection of silicone damp proofing to the external walls of the rear extension(s);
2. The completion of the reduced level dig to the ground adjacent to the external walls of the rear extension(s);
3. The removal of the areas of defective render on the external walls of the rear extension(s) and re-rendering;
4. The preparation of the external render to receive and then the application of an appropriate masonry paint.

47. As detailed above, it is these works, considered necessary by Mr Smit, that are the object of Mr & Mrs Cawley's plea for a remedy of specific performance because these works have not been undertaken or completed by Abri and because Abri does not accept that these works are necessary or otherwise appropriate and save for item 4., Abri is unwilling to carry out these works.

48. Against that background, Mr Wightwick submits that the solution recommended by Mr Walker and implemented by Abri constitutes a reasonable approach to matters and that as landlord and the party with the burden of the repair obligations it is Abri's prerogative to determine what is required in the way of a reasonable remedial solution and therefore, essentially, it will not be open to the Court should this issue proceed to trial to, in effect, look behind Mr Walker's conclusion and order specific performance of further or alternative remedial works.

49. That proposition is only correct in part. Where two alternative reasonable solutions are available to remedy a defect, it will be for a Landlord in Abri's position to decide, acting reasonably, which remedial solution it will implement. However, Abri is not the ultimate arbiter of whether the solution advocated by Mr Walker is an effective and/or reasonable solution and at trial it is most certainly possible that the Court may conclude that Abri's/Mr Walker's analysis/conclusion is wrong or in some respects flawed or otherwise inadequate and therefore does not constitute a discharge of Abri's repair obligation.

50. The question then arising would be whether the remedial solution advocated by Mr Smit (or some part of it), might find favour with the Court and if so, against the background of Abri's unwillingness to voluntarily implement that solution whether the Court would compel Abri by means of an order for specific performance.

51. At this stage, I do not need to decide such matters. At this stage, I am concerned with the burden that lies with Abri to persuade me that there is no reasonable prospect of Mr & Mrs Cawley succeeding in their claim for an order for specific performance and that there is no other compelling reason why the issue should be disposed of at trial and in applying these tests to consider and have careful regard to the authorities to which I am referred and the guidance and principles to be derived from those authorities in the application of CPR Part 24.4(a) and (b).

Conclusion.

52. Mr Smit's investigation, his reported findings and conclusions present as substantially credible.

53. Mr Walker's evidence gives rise to a number of concerns some of which I have detailed above.

54. Mr Robert's evidence is in respects supportive of Mr Walker's evidence but in other respects is at odds with Mr Walker's evidence.

55. In my judgment, Abri do not come close to discharging the evidential burdens arising pursuant to CPR Part 24.2(a) and (b). Accordingly, I will dismiss Abri's application for summary judgment.

THE APPLICATION FOR A STAY.

56. Again, I have read carefully all that is detailed within both Mr Wightwick's and Mr Finlay's lengthy written skeletons, and listened carefully to what each had to say during the course of the hearing, raising questions along the way.

57. I have also had regard to CPR Part 3 and the Notes therein, the various authorities referenced, in particular Churchill and also the detail of the Protocol.

The Letter of Claim.

58. On 15 November 2023 Satchell Moran Solicitors, acting on behalf of Mr & Mrs Cawley, send Abri a Letter of Claim in accordance with the Pre-Action Protocol for Housing Condition Claims (England). The Letter of Claim, inter alia:

- # details a brief but seemingly fair summary of the damp and related issues allegedly detrimentally affecting the property and in consequence the lives of Mr & Mrs Cawley;

- # made clear that their preferred way forward was for the parties to appoint a single joint expert to prepare a Part 35 compliant report; with the cost being borne equally by the parties;
- # accommodates the possibility that Abri would be unwilling to agree to appoint a single joint expert and might prefer to instruct their own expert. It made clear that if this was Abri's intention, their preference was that the parties' individually instructed experts should attend site on the same day and inspect the property together;
- # called for the voluntary pre-action disclosure by Abri of various identified categories of documents;
- # highlighted Mr & Mrs Cawley's awareness of the need to consider ADR and also their willingness to engage in without prejudice discussions, negotiations, mediation and early neutral evaluation;
- # made appropriate initial enquiry of Abri regarding its Internal Complaints Procedure - seemingly with a view to being able to make an informed decision about the appropriateness of that procedure;
- # called upon Abri to correspond with them and not Mr & Mrs Cawley;
- # invites Abri to admit liability and to promptly carry out all necessary repairs so as to remedy the disrepair causing the dampness and associated issues thereby removing the need for the cost of making application for an order for specific performance.

59. The Letter of Claim which was deemed served on 17 December 2023 was in all material respects Protocol compliant.

Abri's Response to the Letter of Claim.

60. On 20 November 2023, Abri acknowledged receipt of the Letter of Claim.

61. On 1 December 2023, Abri's in house legal team replied to Satchell Moran informing them that the Letter of Claim had been sent on to Abri's Internal Complaints Team and that it "would be processed as a complaint".

62. Abri has not adduced a copy of either of its letters dated 20 November or 1 December in support of its application choosing to summarise seemingly what it considers to be the salient content of each letter.

63. Paragraph 4.1 of the Protocol reads as follows:

> "**4.1** The parties should consider whether some form of alternative dispute resolution (ADR) procedure would be more suitable than litigation and if so, try to agree which form of ADR to use.".

64. The unilateral decision on the part of Abri, to treat the Letter of Claim as a "complaint" was not what had been called for by Satchell Moran and was not what paragraph 4.2 the Protocol calls for.

65. There is no evidence before me that Abri responded appropriately to any of Satchell Moran's enquiries regarding Abri's Internal Complaints Procedure. Indeed it was only on 1 May 2024 that Abri provided a copy of its Internal Complaints Procedure to Satchell Moran (page 177 of the agreed hearing bundle), that was nearly 3 months after Abri's stage 1 decision.

66. Paragraph 6.2 of the Protocol reads as follows:
"6.2 The landlord should normally reply to the Letter of Claim within 20 working days of receipt. .... The landlord's response should include at least the following—

> (a) copies of all relevant records or documents requested by the tenant; and
> (b) a response to the tenant's proposals for instructing an expert including—
> i. whether or not the proposed single joint expert is agreed;

ii. whether the letter of instruction is agreed;
iii. if the single joint expert is agreed but with separate instructions, a copy of the letter of instruction; and
iv. if the appointment of a single joint expert is not agreed, whether the landlord agrees to a joint inspection."

67. Paragraph 6.3 of the Protocol reads as follows:

"**6.3** The landlord must also provide a response dealing with the issues set out below, as appropriate. This can be provided either within the response to the Letter of Claim or within 20 working days of receipt of the report of the single joint expert or receipt of the experts' agreed schedule following a joint inspection—

(a) whether liability is admitted and, if so, in respect of which defects;
(b) if liability is disputed in respect of some or all of the defects, the reasons for this;
(c) any point which the landlord wishes to make regarding lack of notice of the defects or any difficulty in gaining access;
(d) a full schedule of intended works, including anticipated start and completion dates and a timetable for the works;
(e) any offer of compensation; and
(f) any offer in respect of costs."

68. There is no evidence before me to demonstrate that that Abri sent a Landlord's Letter of Response to the Letter of Claim as envisaged by paragraph 6.2 of the Protocol whether by 16 December 2023 (20 working days following the deemed date of receipt of the Letter of Claim) or at all.

69. There is also no evidence before me to demonstrate that Abri sent a paragraph 6.3 compliant response whether by 3-4 January 2024 (20 working days following receipt of Mr Walker's report – see elsewhere in this judgment) or at all.

70. Paragraph 6.4 of the Protocol reads as follows:

"**6.4** Failure to respond within 20 working days of receipt of the Letter of Claim or at all, is a breach of the Protocol (see paragraph 1.3) and the tenant is then free to issue proceedings."

Abri's treatment of the Letter of Claim as a "complaint".

71. Also on 20 November 2023, Abri made arrangements for its in-house surveyor, Mr Walker, to undertake what came to be described as a disrepair pre-inspection of the property.

72. That inspection took place on 29 November 2024 seemingly without any attempt being made to accommodate the joint inspection as suggested by Satchell Moran and as the Protocol encourages.

73. Mr Walker's report was finalised on 1 December 2023.

74. Abri's Internal Complaints Team progressed its handling of the "complaint" without inviting or permitting input from Satchell Morgan. Rather, contrary to Satchell Moran's request, they communicated directly with Mrs Cawley.

75. Abri's stage 1 decision references and was informed by the report prepared by Mr Walker following his inspection of the property on 29 November 2023 but does not appear to have involved even the possibility of

considering any expert evidence that Abri might have anticipated will have been gathered or been in the process of being gathered by Satchell Moran.

76. By letter dated 7 February 2024 addressed to Mrs Cawley only, Abri's Internal Complaints Team issued its Stage 1 decision.

77. That decision included Abri's conclusions:

a) that it was upholding Mrs Cawley's complaint made on 6 December 2023 - "... a complaint about damp and mould in the dining room bedroom downstairs" -(following which an offer of £5,722 is made to Mrs Cawley); and also

b) addresses aspects of the content of Satchell Moran's Letter of Claim dated 15 November 2023 but rejects Abri's interpretation of the complaints raised in that letter save in one very minor respect; an acknowledgment as follows - "For the lack of communication, we would like to offer our sincere apologies. It is for this reason that I am upholding your complaint." - (following which an offer of £50 is made to Mrs Cawley).

78. Having read Abri's stage 1 decision carefully, I make clear my concerns that Abri's approach to investigation of complaints and also to its resolution of complaints falls short of my expectations. It is difficult to understand how Abri might properly have dissected out from Satchell Moran's Letter of Complaint what it comes to label as Mrs Cawley's 6 December 2023 "... complaint about damp and mould in the dining room bedroom downstairs" and then find favour with that 6 December complaint but reject the substantive content of the Letter of Claim or what acceptable motive might underpin that approach.

79. The Court has not been provided with a copy of Abri's Internal Complaint's Procedure. Given this lacuna, is not possible for the Court to form any proper conclusion as to the appropriateness of that procedure in the context of whether it might represent an appropriate exercise of the Court's discretion to stay the litigation, as invited by Abri, to give the parties the opportunity to progress to a stage 2 decision.

80. Also, given this lacuna, it is not possible to properly consider and identify whether, having regard to the fact that Abri has unilaterally applied its Internal Complaints Procedure to (a) the 6 December 2023 "complaint" and (b) Abri's interpretation of the content of the Letter of Claim and already produced a stage 1 decision, any useful purpose could at this time be served by matters progressing to a stage 2 decision.

81. The reason for this concern appears from the stage 1 decision itself and the passages under the heading "What's Next" at page 65 of the agreed hearing bundle. Those passages indicate that the Stage 2 process is a review of the stage 1 process and does not involve a repeat of the stage 1 investigation and its findings. This lacuna in evidence before me gives rise to much opaqueness as to what occurred on the way to Abri reaching its stage 1 decision and I cannot be confident that Mr & Mrs Cawley, whose Solicitors were not permitted to contribute to the stage 1 process have not been and will not again be disadvantaged.

82. At page 172 of the agreed hearing bundle there is a quotation reciting for the purposes of Abri's Internal Complaints Procedure how it defines a "complaint". Having regard to that definition it is my firm conclusion that Abri will or ought to have recognised that the alleged disrepairs affecting the rear extension(s) to the property and the associated issues including the adequacy of the repairs had been the subject of numerous, repeated and added to complaints by Mr & Mrs Cawley dating back to the years of Yarlington's role as landlord.

83. My conclusion is that Abri chose to not deal with those complaints under its Internal Complaints Procedure when made as it could and should have done, only doing so later, directly following and in response to receipt of the Letter of Claim and at that time primarily in an attempt to head off a probable liability in respect of legal

costs and knowing or anticipating that its unilateral decision would likely operate to its advantage but also to the detriment of Mr & Mrs Cawley.

The Issue of Proceedings.

84. It was against the background of, inter alia, Abri's failure to provide a Protocol compliant response, its high handed unilateral decision to treat the Letter of Claim as a "complaint" and refer it for a decision under its Internal Complaints Procedure, the manner of Abri's investigation leading to its stage 1 decision, Satchell Moran's reservations regarding Abri's approach to matters leading to the stage 1 decision and Abri's failure to make what they viewed as an acceptable offer to both Mr & Mrs Cawley including in respect of legal costs that in late July 2024, after issuing a number of encouragements in correspondence to Abri to make an appropriate offer of settlement before there was a substantial escalation in legal costs, that a Claim Form came to be issued and served.

85. It is common ground that, at that time, Mr & Mrs Cawley knew full well that Abri had carried out various remedial works as recommended by Mr Walker in December 2023 but that Abri had not and was refusing to carry out various of the remedial works that had been recommended by Mr Smit. The Particulars of Claim, specifically paragraph 7 on page 18 of the agreed hearing bundle are clear.

Conclusion.

86. Having regard to the evidence before me:

Mr & Mrs Cawley's Solicitors have had every reasonable regard to the Protocol.
Abri have had scant regard to the Protocol and its obligations arising thereunder.
it was entirely appropriate for proceedings to have been issued on behalf of Mr & Mrs Cawley in July 2024.

87. In addition to the above, and in particular with the guidance of Churchill firmly in mind having regard, inter alia, to the following:

- # my conclusion that the right time for Abri to have implemented its Internal Complaints Procedure was much earlier and at the very latest in October 2023 when Mr & Mrs Cawley made clear their concern that they were becoming fobbed off by Abri and that they felt they were left with no option but to escalate matters;
- # my conclusion that had Abri dealt with matters as above and properly, in all likelihood, it would not have incurred a potential liability in respect of Mr & Mrs Cawley's legal costs;
- # my conclusion that Abri chose to not deal with those complaints under its Internal Complaints Procedure when made as it could and should have done;
- # my conclusion that Abri unilaterally implemented its Internal Complaints Procedure addressing its interpretation of the content of the Letter of Claim primarily in an attempt to head off a probable liability in respect of legal costs and hoping that its unilateral decision would likely operate to its advantage but aware also that its decision would likely operate to the detriment of Mr & Mrs Cawley;
- # my reservations as expressed above regarding Abri's approach to its handling and resolution of Mr & Mrs Cawley's "complaints";
- # the fact that the detail of Abri's Internal Complaints Procedure has not been made available to me for consideration;
- # that, given this lacuna, it is not possible to properly consider and identify whether, having regard to the fact that Abri has unilaterally applied its Internal Complaints Procedure to (a) the 6 December 2023 "complaint" and (b) Abri's interpretation of the content of the Letter of Claim and already produced a stage 1 decision, any useful purpose could at this time be served by matters progressing to a stage 2 decision;
- # the apparent (having regard to the information lacuna and the comments forming part of the stage 1 decision) limitations of the stage 2 process;

88. … I do not consider it an appropriate exercise of the Court's discretion to order a procedural stay of these proceedings to enable the parties an opportunity to agree to or direct the referral of matters under Abri's Internal Complaints Procedure for a second time or the possibility of the stage 1 decision directed to Mrs Cawley being referred for a stage 2 decision by Abri or any other form of formal ADR.

89. There has been very considerable (6 months) delay to the procedural progress of this matter already; directly attributable to (but not entirely - it is difficult to understand the 5 month delay between the date of the application and the date of the hearing) Abri's application.

COSTS.

90. I do not invite submissions on costs from either party. I consider that the only decision reasonably available to me is to order that Abri pay Mr & Mrs Crawley's costs of this application. That is what I will do.

91. I have reviewed the Costs Scheduled filed by both parties. The Applicant sought the sum of £6,685.00 inclusive of Vat. The Respondent seeks £6,003.36 inclusive of Vat. I summarily assess the costs payable by the Applicant/ Defendant to the Respondents/Claimants as £5,750 inclusive of Vat, payable within 7 days of the date of the handing down of this Judgment (to be fixed).

ABRI'S CRITICISM OF SATCHELL MORAN.

92. Abri asserts that "… this is a claim which exists only for the benefit of C's lawyers." and are otherwise vociferous in their criticism of the manner of the Satchell Moran's conduct of this claim.

93. The criticisms directed at Satchell Moran by Abri are wholly without foundation and should not have been made.

FURTHER DIRECTIONS.

94. I made clear during the hearing on 30 December that it seemed to me that this case cried out for the parties' experts to meet on site and prepare a joint report and that this should have occurred long ago. At the time, that suggestion resonated favourably with both Mr Wightwick and Mr Finlay.

95. Adding to that indication it seems clear to me that with the passage of time both gentlemen ought to be able to observe the effectiveness or otherwise of the remedial works undertaken in early 2024 though this may require limited opening up works and I would therefore encourage that both parties provide the necessary consent and Abri provide the necessary labour as the experts may direct.

96. The above ought to enable the experts to examine and discuss together their late 2023 differences of opinion, and prepare a joint report setting out matters currently agreed and not agreed (with reasons).

97. Having regard to all that I say above, my order will therefore be as follows:

"CLAIM No L00YE173

IN THE COUNTY COURT AT YEOVIL

BETWEEN
(1) MRS CHERYL CAWLEY
First Claimant

(2) MR BARRY CAWLEY
Second Claimant
-and-
ABRI GROUP LIMITED
Defendant

ORDER

Order of Deputy District Judge OFFEN

UPON considering the application of the Defendant dated 31 July 2024 and the evidence filed and served in support thereof and in opposition thereto

AND UPON HEARING Mr Wightwick, Counsel for the applicant and Mr Finlay, Counsel for the respondent

IT IS ORDERED AS FOLLOWS:

1) the Defendant's application for summary judgment is dismissed;

2) the Defendant's application for a procedural stay is dismissed;

3) the Defendant do pay the Claimant's costs of the application dated 31 July 2024 summarily assessed in the sum of £5,750 inclusive of Vat, such costs to be paid, in full within 7 days of the date of this order;

4) This claim is allocated to the Fast Track, complexity band 3 (Brief Reasons: having regard to the value of this claim including the claim for an order for specific performance, this is the usual track. Band 3 is the usual band for housing disrepair claims).

5) The Defendant do file and serve its Defence by **4:00pm** on **20 February 2025**

6) The Claimant's, if so advised, do file and serve any Reply to Defence within 14 days thereafter

7) The Claimants have permission to rely on the written expert report of Mr Smit dated 21 December 2023 as already served;

8) The Defendant has permission to rely on the written expert report of Mr Walker dated 1 December 2023 as already served;

9) The Defendant does not have perm

ission to rely on any expert evidence from its second Surveyor, Mr Roberts;

10) Neither party has permission to adduce oral expert evidence at trial.

11) The parties' experts shall meet at the property on a date to be arranged (not later than 14 days following the date of this order) for the purposes of undertaking a joint inspection of the property and the works undertaken in early 2024 by the Defendant and will, within 14 days thereafter, file and serve a joint written report setting out (a) matters agreed and (b) matters not agreed with reasons. Such joint report shall have appended to it such

photographic evidence as either expert may consider appropriate/necessary to evidence any opening up works undertaken (if any) and what was observable/identifiable as a result with a view to assisting the Court to understand any differing opinions without the need for either party to attend trial to give oral evidence.

12) Either party may raise Part 35 clarifications of the other party's expert within 14 days of the date of this order. Any requests for clarification will be answered within 14 days thereafter.

13) Disclosure of documents will be dealt with as follows:

a. By **4pm** on **2 April 2025** the parties must give to each other standard disclosure by list and category;
b. By **4pm** on **16 April 2025** any request must be made to inspect the original of, or to provide a copy of, a disclosable document;
c. Any such request, unless objected to, must be complied with within 7 days of the request.

14) Evidence of fact will be dealt with as follows:

a. By **4pm** on **30 April 2025** all parties must serve on each other copies of the signed statements (preferably typed) of themselves and of all witnesses on whom they intend to rely and all notices relating to evidence, including Civil Evidence Act notices;
b. Oral evidence will not be permitted at trial from a witness whose statement has not been served in accordance with this Order or has been served late, except with permission from the Court.

15) The trial will be listed as follows:

a. The trial is listed on first available date after 11 June 2025.
b. The estimated length of trial is 1 day, to be a face to face hearing.

16) If any party at any time believes that the case will take either longer or less time, then they must inform the court. Failure to do so may result in a case having to be adjourned.

17) Unless the Claimant does by 28 days before the trial date pay to the court the trial fee or send to the Court a properly completed application for help with fees (that is, one which provides all the required information in the manner requested), then the claim will be struck out without further order and, unless the court orders otherwise, the Claimant will also be liable for the costs which the Defendant has incurred to be subject to detailed assessment if not agreed.

18) The parties shall prepare for the trial as follows:

a. Not less than 7 days before the start of the trial, the Claimant must file at court and serve an indexed and paginated bundle of documents which complies with the requirements of Rule 39.5 Civil Procedure Rules and Practice Direction 32PD27. The parties must endeavour to agree the contents of the bundle before it is filed. The bundle must include a case summary and a chronology. Parties may not vary the time limit in this subparagraph by consent.

b. The bundle filed at court must be a digital bundle which should be a single pdf document, in any event two paper copies of the bundle must also be filed at court. The parties must ensure that any witness giving evidence at a remote hearing has access to a bundle in an accessible and safe format.

c. If the bundle is to be sent by email, parties must ensure the file size is not too large. For justice.gov e-mail addresses the maximum size of email and attachments is 36Mb. Anything larger will be rejected. The subject line of the email should contain the case number, case name, hearing date and name of judge (if known).

d. Pre-trial checklists are dispensed with.

19) At all stages the parties must consider settling this litigation by means of Alternative Dispute Resolution (not including the application of Abri's Internal Complaints Procedure); any party not engaging in any such means proposed by another must serve a witness statement giving reasons within 21 days of that proposal. Such witness statement must not be shown to the trial judge until questions of costs arise.

20) The court must be informed immediately if the claim is settled.

21) The parties may by prior by agreement in writing, extend time for compliance with this order by up to 28 days without the need to apply to the court, provided that any such extension does not jeopardise any hearing date. Beyond that 28 day period, any agreed extension of time must be submitted to the court by email, to include a brief explanation of the reasons, confirmation that it will not prejudice any hearing date and with a draft consent order. The court will then consider whether a formal application and hearing is necessary.

22) Because paragraphs 7 to 21 of this Order has been made without a hearing, the parties have the right to apply to have the order set aside, varied or stayed. A party making such an application must make the application to the court (and pay any appropriate fee) not more than seven days after the date of service of this Order.