

Press Coverage

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Ian Yule The Defective Premises Act protects the owners and occupiers of dwellings against shoddy workmanship. A recent case will help ensure that those at fault do not escape liability

THE HOME GUARD

The proposed amendments to the Construction Act have been in the news over the past few months. However, it is another piece of legislation, now nearly 40 years old, that was recently given a boost by the Court of Appeal.

The Defective Premises Act 1972 was passed to give owners and occupiers of dwellings protection against bad workmanship or design. The Court of Appeal in *Bole vs Huntsbuild* has now upheld the claims of a couple whose house was affected by heave caused by shallow foundations (Tony Bingham reported the original High Court decision in 17 April 2009). The court's comments, and its endorsement of the original judgment, will increase the use that can be made of the act.

Any person or company that has an interest in a dwelling can take advantage of the rights given by the act. The interest need not be that of ownership – a tenancy will suffice, and "dwelling" covers houses and flats.

The act imposes a duty on anyone "taking on work" in connection with the provision of the dwelling to ensure that they perform in a "workmanlike" manner, use proper materials, and that the dwelling is fit for habitation when they have finished. The act covers architects, engineers and other professionals, as well as builders and developers. In those cases the obligation is to work in a professional, rather than workmanlike, manner. The works can be extensions and conversions, as well as new build.

An important point is that the claimant must show that the defective work has led to the dwelling being unfit for habitation. The legislation was intended to target serious defects, not minor ones. But the fact that someone is living in a house does not make it inhabitable for the purposes of the act. Nor

THE FACT THAT SOMEONE IS LIVING IN A HOUSE DOES NOT MAKE IT INHABITABLE FOR THE PURPOSES OF THE ACT. NOR DOES IT MATTER THAT THE DEFECT IS NOT YET CAUSING DAMAGE. A HOUSE WITH A FAULTY ROOF IS STILL DEFECTIVE, EVEN IF IT DOES NOT RAIN FOR MONTHS

does it matter that the defect is not yet causing damage. As was said in one case, a house with a faulty roof is still defective, even if it does not rain for several months.

In *Bole*, the purchasers discovered cracks in their internal and external walls. These were later found to have been caused by heave resulting from the removal of conifer trees and a willow at the site clearance stage. The problem could have been avoided had the foundations been dug to a greater depth. The trial judge held that it was the engineer, and not the contractor, who was at fault here: it could not expect the contractor to examine excavated soil to discover how far down the foundations should be taken.

In the Court of Appeal the engineer tried to argue that the defects did not make the house uninhabitable. The court disagreed. It held that the judge was entitled to take into account the fact that the owners would have to vacate the premises for some months while underpinning was carried out, and new piled foundations installed.

The engineer also tried to argue that the judge should have dealt individually with each crack and warp to decide whether, in each case, it affected habitability. The court disagreed again. The cracks all stemmed from one fundamental defect – namely, the inadequate foundations. The judge was therefore perfectly correct to treat them all as one matter. This also meant that the engineer could not escape liability for the cost of such things as re-hanging damaged wardrobe doors and door frames. Again, all these costs could be traced back to the original negligence.

Owners will not always have a contract or collateral warranty with the original builder, and are even less likely to have a direct route to claim against professional advisers. Of course, many owners will have the benefit of NHBC or similar cover. However, as with any insurance policy, one cannot always be certain that it will respond to the loss suffered. In any case, the NHBC Buildmark policy does not extend to such matters as any loss in the value of the house, loss of income or business opportunity or damages for distress and inconvenience.

In general, the act is a useful weapon in the armoury of all those who are left with a defective dwelling owing to someone else's failure. The Court of Appeal's decision will help to ensure that those at fault do not escape liability. The judgment is therefore to be welcomed.

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