The High Court recently considered the case of *Carmel Southend Limited v Strachan & Henshaw Limited* [2007] EWHC 1289 (TCC); [2007] P.L.S.C.S 118. The landlord, Carmel Southend Limited raised an action for damages in respect of the tenant's breach of covenant. The case concerned the tenant's liability for dilapidations and the dispute arose mainly in relation to repairs to the roof of the premises. The judgement focused on the meaning of the repair clause in the lease when deciding on the measure for liability for damages. The Court also considered whether the landlord carrying out more substantive repairs would affect that liability.

**Disputed standard of repairs to the roof**

Strachan & Henshaw Limited had taken a lease of industrial premises for a term of 15 years terminating in December 2004. The tenant's repair covenant included an obligation to "repair and keep in good and substantial repair and condition the demised premises". In addition there was an obligation to return the premises to the landlords at the end of the lease in such a condition as was consistent with compliance with the repair covenants.

Strachan & Henshaw Limited had undertaken works to the roof at the commencement of the lease and had carried out some ongoing maintenance during the period of the lease: the roof leaked and there were also problems with the roof lights and seals. The landlords argued that when Strachan & Henshaw Limited handed back the property at the expiry of the lease, the property was in a state of disrepair. The parties were generally in agreement on this, however a dispute arose as to what extent of repair to the roof would suffice and whether replacement was necessary. Carmel Southend Limited and Strachan & Henshaw Limited had documented in a schedule of dilapidations that a patch repair job on the roof would suffice to put it back to a state of repair that met the repairing obligations under the terms of the lease.

Strachan & Henshaw Limited had sublet the property to Metso Minerals UK Limited who remained in occupation of the premises when Strachan & Henshaw Limited's lease expired in December 2004. There were ongoing discussions between the sub-tenant and the landlord regarding a new lease at the same time as the outgoing tenant was negotiating the schedule of dilapidations with the landlord's surveyor.

The sub-tenant Metso Minerals UK Limited, when negotiating the terms of their lease with Carmel Southend Limited, insisted that the roof be completely recovered using overcladding, as a condition of them taking the proposed new lease of the premises. Carmel Southend Limited agreed to carry out repairs to the roof using the overcladding method and sought to recoup the whole costs from Strachan & Henshaw Limited under their repair covenant.
Carmel Southend Limited claimed that the outgoing tenant should be responsible for the costs of the overcladding of the whole roof carried out by Carmel Southend Limited. Strachan & Henshaw Limited argued that patch repairs were a reasonable and cheaper alternative to overcladding. It was also argued that the former method of repair was "reasonably and sensibly possible", therefore the patch repair method should form the basis of the calculation for the claim for damages. Strachan & Henshaw Limited extended this argument, also, arguing that since the overcladding work rendered the former roof lights useless, they should be able to reduce the amount due for the patch repairs by the proportion of costs attributed to the replacement roof lights.

A Standard short of perfection will suffice

The High Court held that patch repair works were appropriate in the circumstances and in light of Strachan & Henshaw Limited's responsibility under the repairing covenant in the lease. It was clear from the evidence shown that the decision of the landlord to carry out overcladding to the roof, rather than patch repairs, was due to the demand of the new tenant, Metso Minerals UK Limited, who was seeking a new roof as a condition of entering into a new lease. The decision was not reached on the basis of the repair covenant in the lease and it was apparent that no subsequent inspection of the property had been carried out to otherwise alter the original agreed position as set out in the earlier schedule of dilapidations.

The Court considered the general principles of law in this area and highlighted that the obligation "to keep in good and substantial repair" did not extend liability to an obligation to put the premises in perfect repair. In addition, the Court commented that where there was more than one option of method of repair, it is for the tenant to select the method and the measure of damages at common law is based on the less expensive option. The overcladding was one option but the decision to adopt this method of repair was based on the ongoing interests of the parties under the new lease rather than by reference to the agreed obligations under the lease in question.

The landlord argued that the patch repairs were "futile" and "impracticable" due largely to their ongoing nature. The Court dismissed these arguments on the basis of the evidence from the inspections and reports relating to the repairs and also the information relating to industry methods for such repairs.

The tenant sought to rely on section 18 of the Landlord and Tenant Act 1927 to limit responsibility for damages. Section 18 of the Landlord and Tenant Act 1927 prevents damages for disrepair from being recovered if it can be shown that the premises are to be demolished or is to be the subject of such structural alteration that it would render such repairs useless. The Court held that this did not apply, due to the roof work being a repair rather than a structural alteration. Also, it was held that the terms of the Act did not operate to deny a landlord the right to claim for damages altogether as a result of carrying out repairs to a better state and condition than would have been required in terms of a repair covenant. Accordingly, any argument by Strachan & Henshaw Limited that no damages were due was rejected. So also was the argument that the agreed amount for the patch repairs could be reduced to deduct the cost of any works that may be undone by subsequent enhanced repair works by the landlord.

An objective test applies
This case emphasises the importance of the exact wording of the covenant in the lease when it comes to assessing damages for dilapidation claims. The Court has contained the liability to that agreed at the outset of the lease and has not permitted new factors to extend the tenant's liability. The standard of repair can take into account the state of repair expected of a reasonable incoming tenant but the test must remain an objective one. Any additional repairs, or any upgrading costs incurred when carrying out repairs as part of the landlord's long-term investment in the property will require to be met by the landlords.