APPENDIX A
RE MR AND MRS ROBERTS

Summary of facts
1. At the beginning of March 2010, Mrs Roberts engaged Mr Cork, a painter and decorator, to re-decorate the flat which comprises the top floor of the house owned by Mrs Roberts and her husband. The flat was due to be let to a Mrs Heller for 6 months from 1st April 2010 at a rent of £500 pw. The price for the re-decoration was £1,500. Mr and Mrs Roberts say that Mr Cork carried out the work so poorly that Mrs Heller refused to move into the flat and went to live somewhere else. Mr and Mrs Roberts had to get the flat re-decorated (at a cost of £1,250) and had to find a new tenant. They had to instruct an agent in order to find a new tenant. Eventually, a new tenant was found; he moved into the flat on 1st September 2010.

2. I am asked to advise Mr and Mrs Roberts whether they have a good claim against Mr Cork and, if so, what damages they can expect to recover.

Summary of advice
3. In summary, I would advise that Mr and Mrs Roberts have a strong case against Mr Cork provided that they can prove that his work fell below the acceptable standard. In order to recover the full cost of re-decoration, it will have to be shown that re-decoration was necessary and that the price paid was reasonable. In order for the lost rent (and the agent’s fee) to be recovered, it will have to be established that Mr Cork knew that Mr and Mrs Roberts intended to let the flat to a tenant.

Breach of contract
4. I am not told whether the contract was oral or written. If it was in writing (or if there is any written evidence of its terms), my Instructing Solicitor should check to see if there is any term as to the standard of workmanship or any clause which purports to exclude or limit Mr Cork’s liability.

5. By virtue of s 13 of the Supply of Goods and Services Act 1982, it was an implied term of the agreement that Mr Cork would carry out the re-decoration of the flat with reasonable care and skill. To establish breach of this term, evidence will have to be adduced to show that the standard of Mr Cork’s work fell below that to be expected of a reasonable decorator.

6. Mr and Mrs Roberts should each provide a proof of evidence setting out, in as much detail as they can, the defects in Mr Cork’s work. They should include any photographs that happen to be available.
7. The fact that Mrs Heller rejected the flat because of its condition is useful evidence and a statement should be taken from her if she can be traced and is willing to provide one. If she is not available as a witness, Mr and Mrs Roberts will be the only source of evidence of the fact of, and her reasons for, refusing to rent the flat.

8. More crucially, a statement should be taken from the person who re-decorated the flat after Mr Cork. Assuming he or she is willing to provide a statement, this would be an invaluable source of evidence both of the state of the flat before the remedial work was carried out, and of the standard of the work done by Mr Cork. A detailed statement should be sought, setting out all the defects in the work done by Mr Cork.

**Damages**

9. If liability is established, the cost of re-decoration (£1,250) is recoverable, provided that full re-decoration (rather than something less drastic) was required and provided that the sum charged was reasonable for the work done. The person who re-decorated the flat should be asked to comment on this specifically. Mr and Mrs Roberts should also be asked how many decorators they approached to do the remedial work and what quotations they received.

10. The remaining losses (loss of rent and the agent’s fee) can only be recovered if Mr Cork was aware that the flat was to be let to a tenant. Otherwise, the loss could not fairly be said to have been within his contemplation when the contract was made, and so will be held too remote. Mrs Roberts should include in her proof of evidence details of what she told Mr Cork about the intended use of the flat and/or whether it was obvious from the appearance of the flat that it was to be let.

11. Assuming that it can be established that Mr Cork realised that the flat was to be let, the loss of rent will be recoverable for the entire period from the date when Mrs Heller should have moved in to the date when the new tenant moved in. This loss clearly flows from Mr Cork’s breach of contract and, in my opinion, it cannot be said that Mr and Mrs Roberts failed to mitigate their loss: by instructing an agent, they acted reasonably. It follows that the agent’s fees must also be recoverable.

12. If Mr Cork argues that it took Mr and Mrs Roberts too long to find a new tenant (in other words, that they failed to mitigate their loss), evidence from the agent of the attempts to find a tenant, and the state of the market for rented accommodation at the relevant time, would be required.

**Next steps**

13. The damages likely to be recoverable in this case are at the bottom end of the value of cases allocated to the fast-track. Expenditure in pursuing the claim must reflect its likely value. At this stage, I would advise that the following steps be taken:

   (i) if there is a written contract, or written evidence of the contract, this should be inspected to check for the existence of any terms relating to the standard of workmanship or which seek to exclude or restrict liability;

   (ii) full proofs of evidence should be obtained from Mr and Mrs Roberts (addressing their initial dealings with Mr Cork, the state of the flat after he had finished work on it, the steps taken to find a decorator to carry out remedial
work, the steps taken to find a new tenant, and whether anything was said which would have made it clear to Mr Cork that the flat was to be let to a tenant);

(iii) attempts should be made to see if the second decorator would be prepared to provide a witness statement setting out the shortcomings in Mr Cork's work and how those defects were put right;

(iv) attempts should be made to locate Mrs Heller and to see if she would be willing to provide a statement about her reasons for rejecting the flat;

(v) a letter should be sent to Mr Cork by those instructing me explaining the nature of the allegations made by Mr and Mrs Roberts, setting out the full extent of their losses, and inviting him to make an open admission of liability;

(vi) it would be worth checking whether Mr Cork is a member of a trade association and, if so, whether it offers an arbitration scheme as an alternative to court proceedings (if this is so, it should be established whether the award could include consequential losses and legal costs that would be recoverable in court proceedings).

PETER NORVIC

City Chambers WC1

[date]

IMPORTANT NOTE:

This opinion relates to a case which is comparatively straightforward—there is very little law in it as the issues are largely factual ones. An opinion in a case involving more complex legal or factual issues would, of course, look very different.