



# **Guildford Borough Council Housing Services**

## **Disrepair Policy and Procedure**

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## **1. Introduction**

- 1.1. The aim of this policy and procedure is to provide a clear framework for staff at Guildford Borough Council dealing with Disrepair and Fitness for Habitation claims arising from allegations of disrepair and defective premises. It will ensure clarity, consistency and provide an audit trail.
- 1.2. The policy and procedure are based on compliance with the Pre-Action Protocol for Housing Conditions Claims (England) ('the Protocol'). The specific aims of the policy and procedure are to:
  - minimise the potential for claims
  - avoid litigation and consider Alternative Dispute Resolution ("ADR")
  - promote appropriate response in respect of repairs which are the landlord's responsibility

## **2. Aims of the Policy**

- 2.1. We aim to avoid disrepair in our properties and the dissatisfaction of tenants by:
  - investigating and responding to all disrepair claims thoroughly, quickly and effectively and considering all reasonable options when trying to resolve complaints
  - defending claims robustly where legal action is pursued by a tenant, and we believe that the disrepair claim does not have merit
  - seeking to recharge tenants where disrepair has arisen due to tenant failure to comply with their obligations under the tenancy and where remedial work has been carried out by the Council
  - offering appropriate and fair compensation based on the relevant legal principles where we have failed to act correctly to remedy disrepair
- 2.2. Our objective is to avoid litigation wherever possible and to follow the Protocol guidelines on seeking alternative dispute resolution and evidencing this. Where litigation cannot be avoided, we aim to try to ensure the Protocol is followed and all timescales are adhered to minimise the impact of the claim as follows:
  - Rebut unmeritorious claims at the earliest opportunity
  - Minimise the number of cases proceeding to court.
  - Close disrepair cases as quickly as possible
  - Follow good pre-litigation practice
  - Ensure early exchange of information accurately and effectively
  - Effective management of contractors engaged to carry out repair works
  - Ensure the processes involved are transparent, scrutinised and monitored
  - Empower staff to make commercial decisions on behalf of the Council to minimise the costs and damages incurred

## **3. Legal Framework**

- 3.1. The scope of this policy is covered by legislation including the following:
  - Pre-Action Protocol for Housing Conditions Claims (England),

- Landlord and Tenant Act 1985 Sections 9A and 11
- Defective Premises Act 1972 Section 4
- Environmental Protection Act 1990
- Housing Act 2004
- Commonhold and Leasehold Reform Act 2002

## **4. Method Statement**

### **4.1. Preventative Action**

We aim to deliver a high-quality reactive repairs service. However, if we become aware of any failings, we will investigate and resolve this as a priority case.

### **4.2. Disrepair Claims**

We will thoroughly investigate all disrepair complaints and seek to resolve all disrepair and fitness for habitation matters found and for which the Council is responsible.

### **4.3. Alternative Dispute Resolution**

We will always try to settle any genuine disrepair claim without court action and will consider using a form of ADR as an alternative to court action where appropriate and cost-effective to do so.

### **4.4. Complaints**

Where we have not met our repairing obligations, a resident may pursue a complaint. We will consider any complaint in line with our Complaints Policy and, as part of this policy, consider a negotiated settlement where appropriate.

### **4.5. Legal Notification of Disrepair**

Should the tenant decide to pursue legal action, the Council may receive an 'Early Notification Letter' and/or a 'Letter of Claim' concerning disrepair and/or fitness for habitation, and/or Defective Premises Act liability served under the Protocol. Should this happen, we will follow the requirements of the Protocol. As appropriate to the factual and legal situation involved, we will either defend the claim or aim to reach a reasonable negotiated settlement. If the disrepair claim has proceeded to court the normal court rule of 'costs follow the event' (costs awarded to the winner) will normally apply although, the court may make a different order if a party has failed to comply with the Protocol.

The Protocol is based on the principle that court action should be treated as a last resort and encourages parties to try to avoid litigation by agreeing a settlement of a genuine claim before the commencement of proceedings.

The Protocol sets out timescales which we will always try to adhere to, but the Protocol recognises that adherence is facts dependent in each case.

## **5. The Procedure**

- 5.1. Claims under the Pre-Action Protocol (PAP) or the Homes (Fitness for Habitation) Act 2018 can be received by post including all new cases.

- 5.2. All new claims must be recorded on the disrepair tracker and each relevant stage, with date, must be recorded to ensure full compliance with the Protocol.
- 5.3. On receipt of a new claim a service request should be placed with the Principal Housing Lawyer in the Legal Team and, the Protocol claim letter should be forwarded as soon as it is received.
- 5.4. The Legal Team will acknowledge receipt of instruction to the Housing Team and the tenant's legal representative. Legal will confirm the target PAP response date by which the required disclosure documentation should be collated and ready to serve with the formal Protocol response letter.
- 5.5. The Technical Team must make an immediate request to the Estates and Housing managers for a disclosure bundle with a date they expect to receive the disclosure documents. The required documentation from Estates will include: the tenancy document, the weekly rent figure for each year relevant to the claim, any arrears of rent or other debts owed to the Council on the account, any notes on the tenancy file which relate to disrepair and any disrepair complaints made by the tenant, any vulnerability or relevant equality protected characteristic note on file. When the Technical team receive the requested disclosure information from Estates, they will provide it to the Legal Team together with the repairs history, any property inspection reports, any available gas and electrical safety inspection certificates for the period covered by the claim.
  - I. The disclosure documentation should be sent to the Legal Team in advance of the Protocol response date in order that it can be checked and then sent with the Protocol response letter.
  - II. The Legal Team will discuss with and advise the repairs team on the merits of contesting the case and, if appropriate, negotiate any settlement including provision for legal fees.
    - I. In a case where it is appropriate to use an external surveyor an appointment should be made within 30 days for a surveyor to attend the property to provide a Part 35 compliant report or, if an independent SJE is to be appointed, arrangements must be made with the tenant's solicitor.
  - II. The Legal Team will advise whether the claim should be agreed or rejected in light of the evidence.
  - III. The Legal Team will respond formally to the PAP letter.
  - IV. In the event that it is accepted that repair works are required, the Technical Team will agree a Scott Schedule for the purpose.
- 5.6. The Legal Team will inform the tenant's legal representatives of proposed works and request confirmation that access will be given.
- 5.7. The Technical Team will action the works via Building Housing Repairs Team or a contractor via appointment and ensure the resident is aware and has agreed any appointments in advance.
- 5.8. The Technical Team will use best endeavours to ensure that all works are completed within the timeframe given.
- 5.9. If the Technical Team experience any access issues these must be escalated to the Housing and Estates Teams and/or the Legal Team for tenancy action.
- 5.10. The Technical Team will inspect any works carried out within 30 days.

## **6. Policy Outcomes**

- 6.1. By successfully implementing this policy we will avoid litigation wherever possible and follow the court's preferred approach namely to try to resolve disputes via an alternative dispute resolution process and be able to evidence this.
- 6.2. The effective implementation of this policy will mean that all GBC tenants are treated in a fair and transparent manner, with the aim of ensuring that all homes are kept to a decent standard, in accordance with our policies, the relevant regulatory standards and all applicable legislation.

## **7. Monitoring and Review**

- 7.1. In order to ensure that the policy is effective and delivering the intended impact, the following Key Performance Indicator's (KPI's) are in place to monitor the performance of the policy:
  - We will monitor the number and costs of disrepair cases, and these will be reported to the SMT on a quarterly basis.
- 7.2. Furthermore, in line with the Group's Policy Framework, this policy is scheduled to be reviewed every 3 years, unless due to a change in Government legislation or regulatory requirements, the review period will be brought forward in order to ensure compliance.
- 7.3. Input and approval will be sought from our residents (via the Tenants Group) prior to making any substantive changes.

## **8. Reviews and Complaints**

- 8.1. Any individual who is dissatisfied with the service experienced should be encouraged to provide feedback. Complaints regarding the implementation of this policy will be dealt with in accordance with the Council's corporate Customer Complaints Policy and associated procedures.

## **9. Equality and Diversity**

- 9.1. GBC is committed to equal and fair treatment of all sections of the community. Accordingly, no person will be discriminated against during the implementation of this policy on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.
- 9.2. We are committed to helping customers to access information about their homes and services in a way that suits individual needs.
- 9.3. The council aims to provide homes and services that meet the diverse needs of customers. We believe that all customers should be able to access housing, support and care services with the same ease and that the quality of our service is the same high standard for all.
- 9.4. In delivering this policy, GBC Housing's staff will comply fully with the requirements of the Council's Equalities and Human Rights Policy.
- 9.5. In order to comply with the Equality Act 2010, an equality impact analysis (EIA) was completed as part of the policy review. Upon completing the EIA it was found that the implementation of the policy would support and encourage the aims of the Public Sector Equality Duty.

## **10. Data Protection and Retention of Information**

All information will be handled in accordance with the requirements of General Data Protection Regulations and the Data Protection Act 2018. The handling and storage of personal data will be managed and stored in accordance with our Data Protection Policy and our Record Retention Disposal Schedule.