



Tower Hamlets Homes

Disrepair Policy

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1. Purpose

The aim of this policy is to provide a clear framework for staff at Tower Hamlets Homes (THH) dealing with housing disrepair and injury claims arising from allegations of disrepair and defective premises claims (working in partnership with London Borough of Tower Hamlets insurers). It will ensure clarity, consistency and provide an audit trail.

The policy is based on complying with the Housing Disrepair Protocol but will look to have much tighter timescales. The specific aims of the policy are:

- To minimise potential claims under the legislation;
- To avoid unnecessary litigation;
- To promote responsive and appropriate repairs which are the landlord's responsibility.

2. Scope

As a landlord LBTH is legally obliged to repair and maintain its housing portfolio and 'keep in repair' their property portfolio. Properties that fall below the standard are deemed to be in a 'state of disrepair'.

THH's Disrepair Policy applies to all residential properties owned by LBTH and managed by THH, excluding commercial properties. The policy relates to disrepair claims and statutory nuisance brought under Section 11 Landlord and Tenant Act 1985 and Section 79(1) Environmental Protection Act 1990, with claims issued pursuant to Section 82 Environmental Protection Act. There will be a crossover with Section 4 Defective Premises Act 1972 and claims for personal injury. THH must not accept liability or breach of duty for any claims involving an injury prior to reporting and discussing the claim with LBTH insurers.

There may be an overlap between public liability claims and disrepair and in such cases THH's insurers should be informed of a related claim under section 11 of the LTA 1985 or Section 82 of the EPA 1990.

3. References and Relevant Legislation

Landlord and Tenant Act 1985 Section 11 Housing
Disrepair Protocol – Civil Procedure Rules (revised)
Section 4 of the defective Premises Act 1972
Occupiers Liability Act 1957
Occupiers Liability Act 1984 Environmental
Protection Act 1990 housing Act 2004
Equality Act 2010

4. Key Objectives

The main objective is to avoid litigation wherever possible and to follow the Housing Protocol guidelines on seeking alternative dispute resolution and evidencing this.

Where litigation cannot be avoided, we aim to ensure the Disrepair protocol is followed and all timescales are adhered to minimise the impact of the claim.

This includes: -

- closing down disrepair cases as quickly as possible;
- following good pre-litigation practice;
- ensuring early exchange of information accurately and effectively;
- close and effective management of contractors engaged to carry out repair works;
- ensuring the processes involved are transparent, scrutinised and monitored;
- empowering staff to make commercial decisions on behalf of THH to minimise the costs and damages incurred; and
- minimising the number of cases proceeding to court.

5. Monitoring against the Corporate Plan

This policy will be reviewed annually, to ensure it is current, fit for purpose and incorporates best practice developments.

Where new legislation is introduced, or case law that affects the terms of this policy, a review may take place more frequently than annually.

6. The Policy

a) THH Position Statement

Officers of THH will comply with the legislation as far as practicable, to effectively deal with any disrepair and/or injury from disrepair claims against the organisation.

Officers and managers will act as the responsible people to ensure LBTH is protected against any inappropriate claims and the best interests of LBTH are protected at all times.

The Head of Repairs will have overall responsibility for the Disrepair Policy and its implementation throughout THH teams/sections and communicating lessons learned.

Ownership of all matters arising out of Disrepair and injury claims will be within the remit of the Head of Repairs or nominated deputy, in conjunction with LBTH Head of Legal Services.

Officers and managers will be proactive at all times to minimise the claims for disrepair in the following ways:

- scrutiny of all claims and why they have arisen;
- ensuring prompt action to inspect properties and carry out remedial works as required;

- learning outcomes from current and historic disrepair claims.

THH Repairs Area Manager (portfolio lead for Disrepair), will review all Disrepair claims on a regular basis to ensure all areas are being delivered according to the policy.

A periodic review of the Tenancy Agreements offered to new tenants will be carried out, to ensure that the clauses relating to disrepair do not put LBTH unduly at risk of further claims in future. Case reviews will be conducted to gain knowledge from lessons learned, both through claims that are lost at trial/settled as well as claims that are successfully defended by LBTH.

This policy is not a complete legal statement in terms of the above mentioned Acts but merely a guideline as to how THH will approach Disrepair. Officers will at all times act in accordance with legal advice from LBTH Legal Team and professionals in this field, so as to avoid existing and future claims.

b) Housing Disrepair Protocol - pre-action protocol for disrepair

THH will always act in accordance with the Housing Disrepair Protocol, which provides comprehensive and detailed direction as to the steps that authorities should follow, in the event of a claim of Disrepair.

The Protocol is based on the principle that court action should be treated as a last resort and encourages parties to avoid litigation by agreeing a settlement of the claim before the commencement of proceedings. The protocol promotes the use of 'experts' to help the different parties agree on the repair, its causes and action required to address it. The latest revision of the protocol can be found in full at:

https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_hou

The main components of the Protocol are:

- i) Alternative Dispute Resolution
THH will always try to settle any disrepair claim without court action and will consider using all available forms of Alternative Dispute Resolution to avoid the necessity for court action as outlined in the pre-action protocol.
- ii) Appointment of Experts
The Protocol encourages the use of a single joint expert and THH will adopt this approach wherever possible.
In order to make it less likely that a second expert will be necessary, the Protocol provides for THH to forward their own instructions directly to a single joint expert. Both parties can ask relevant questions of the expert.
If THH and the resident cannot agree on a single joint expert, either with joint or separate instructions, the Protocol suggests a joint inspection by each party's expert.

Where a single joint expert is agreed upon between THH and the resident each party will pay one half of the cost of the report.
If a single joint expert is not agreed, THHs' appointed expert and the resident's expert should arrange a joint inspection of the property.
THH will pay the full cost of its own expert's report and the resident will pay the full cost of their own expert's report.

iii) Liability of costs for non-compliance

For cases where court action cannot be avoided, the court may ask THH or the resident to pay costs if either party failed to comply with the Pre-Action Protocol. THH will follow the protocol to ensure compliance at all stages.

c) Section 11 Landlord and Tenant Act 1985

There is an implied duty under Section 11 of the Landlord and Tenant Act 1985 as well as the express repairing provisions within THH tenancy agreements.

These place the council under a duty to maintain properties to the required standard allowing the tenant to exercise quiet enjoyment of their property.

Under Section 11, THH is responsible for the exterior, the structure and all major interior repairs. This is a non-delegable duty, although the carrying out of the duty can be delegated to another body, person or organisation.

Section 11 requires us to:

- keep in repair the structure and exterior of the dwelling house [including drains, gutters and external pipes],
- keep in repair and proper working order the installations in the dwelling house for the supply of water, gas and electricity and for the sanitation [including basins, sinks, baths and sanitary conveniences but not other fixtures and fittings and appliances for making use of the supply of water, gas or electricity], and
- keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

Tenants are responsible for minor interior repairs including, but not limited to, unblocking sinks and changing fuses, as documented within the Tenancy Agreement.

In order for a Disrepair claim to develop and liability to arise, the tenant must prove the following:

- that the defect falls within the statutory and express provisions of the repairing obligations, and that the landlord has failed to remedy the defect within a 'reasonable period' (the length of time depends upon the nature of the problem).
- that the landlord is aware of the problem (i.e., on notice from the tenant that a defect has arisen).

It is important to note that if THH fails to deal with the defect within a 'reasonable period' following receipt of notice of the defect from the tenant, THH potentially will be liable to pay damages to the tenant, which will be included within the claim. This will potentially increase financial damages awarded during the period of time the defect remained outstanding. "Reasonable period" is not defined, however reference should be made to the priority times for repairs set by THH published in the Repairs Policy on our website – www.towerhamletshomes.org.uk

If a defect occurs within the common parts of the buildings, e.g., lifts stairwells and entrance halls to blocks of flats etc., notice of the defect is not required from the tenants prior to the landlord becoming liable for repairing the defect.

Tenants are encouraged to report disrepair via the various forms of contact made available to them to ensure a response within the agreed priority time limits, depending on seriousness of the disrepair. Defects can be reported by any Officer of THH.

Identifying potential defects and carrying out effective repairs will eliminate any potential liability.

d) Section 4 Defective Premises Act 1972

This legislation sets out additional obligations upon Landlords. Where premises are let under a tenancy, THH has a legal duty to take reasonable care that the property is safe for "all persons who might reasonably be affected" by disrepair. This includes not only the tenant but also other people such as neighbours or visitors.

Section 4 of the Defective Premises Act 1972 means THH may be liable for damages to the tenant or any other person THH knew or ought to have known to be present at the property, for any disrepair THH have not repaired within a reasonable period of time.

Each case will be considered on its own merit in accordance with the facts and after discussion with THH insurers. THH will not concede breach of duty in such cases, without a prior discussion with their insurers, to ensure there is no breach of insurance provisions in place.

The following provides a summary of the applicable legislation:

- Section 4 does not impose a repairing obligation. It arises where the landlord owes a corresponding duty to repair pursuant so S11 Landlord and Tenant Act 1985 and/or express provisions and injury occurred as a result of a "relevant defect".

A breach of Section 4 can find an action for personal injury or damage caused by a defect.

- THH must have constructive or actual notice, or imputed notice, (THH ought to have know about the defect). Each case is assessed on its own facts and merits.
- Section 4 only applies to the premises let, not to other parts of the properties such as the common parts, (dealt with under Section 11) which the landlord may be liable to repair. Section 4 does apply to properties under a lease.
- The rule at common law identifies a landlord is only liable in contract to tenants of the property not third parties. Section 4 extends this duty to cover a visitor or any person that the landlord might reasonably expect to be in the property, for example, a neighbour, another member of the household, a friend and that person or the tenant is injured or suffers property damage as a result of disrepair. This element is covered by insurance and claims for injury under Section 4 will be dealt with by THH's insurers.
- The only remedy for a claim under Section 4 is damages. There is no obligation on a landlord to repair the defect although it would be advisable and THH maintenance staff should examine and/or raise a repair if necessary to prevent future claims and protect the tenant, visitors of the tenant and the property.
- In communal areas reference is made to The Occupiers Acts 1957 and 1984 rather than Section 4 DPA. THH cannot escape their duty to repair communal areas by relying on complaints received from customers, instead THH are liable to carry out such repairs immediately they become apparent. THH will reply on its inspection policy in this regard.

e) *Statutory Nuisance under Section 82 Environmental Protection Act 1990 (EPA 1990)*

THH is further bound by the Environmental Protection Act 1990. Section 82 of this legislation enables a tenant aggrieved by a Statutory Nuisance pursuant to Section 79(1) EPA 1990 if the disrepair is injurious to health and/or a nuisance, to bring proceedings in a Magistrates' Court against the persons responsible, i.e., THH.

This is an objective standard so the disrepair has to be likely to cause injury; no injury has to have occurred for a successful claim to be brought against THH.

This policy concentrates solely on the use of Section 82 to manage claims involving unsatisfactory conditions in dwellings, defined in Section 79 as "any premises in such a state as to be prejudicial to health or a nuisance".

Section 82 is an important mechanism which allows individuals the right to seek swift redress for a variety of problems which are judged to be Statutory Nuisances. This right is not in question.

Under Section 82 tenants can take action against their landlord if they consider that their property is in a condition that is deemed to be prejudicial to health or a nuisance.

Briefly the stages are:

- the individual must give at least 21 days written notice of the intention to take proceedings;
- if the Statutory Nuisance exists at the expiry of the notice period, the individual may apply for a Summons;
- if at the hearing the court finds the Statutory Nuisance existed at the date of the application for the Summons, then the Court must order the defendant to pay the costs reasonably incurred in bringing the prosecution.
- if the court finds that the Statutory Nuisance still exists at the date of the hearing, then the Court: must convict the defendant; must make an Order requiring the defendant to remove the Statutory Nuisance; may impose a fine, and; make a compensation Order.
- if items of disrepair, which are a breach of repairing obligations imposed by Section 11, pose a threat to the health of the occupiers, action could be taken using both Section 11 and Section 82. While there is an overlap, section 82 would not cover all defects, nor would Section 11.

For action to be taken under Section 82 all of the following circumstances must exist:

- the dwelling must be in an unsatisfactory condition;
- the tenant must be motivated to want to do something about the conditions and seek a legal remedy.

7. Equality Issues

THH will ensure that all tenants who make a claim for disrepair are treated equally, sexual orientation, so that no particular section of the community is discriminated against. THH is aware that research shows that citizens from particular ethnic minority communities are more likely to live in poorer quality housing and overcrowded conditions.

The Repairs Team will annually analyse disrepair claims by locality/community, to establish if a disproportionate number of claims are being made by tenants in any one particular area. Further investigation will take place if findings show this to be the case.

8. Disrepair Monitoring

a) Performance Management

THH will continually monitor the performance of disrepair each month to ensure maximum efficiency and effectiveness throughout. All quality issues will be dealt with at site level, through receiving a post inspection of all work undertaken that is associated with the claim.

b) Monthly Team Reviews

Monthly progress meetings will be held between THH Repairs Team and LBTH Legal Team, to monitor results and identify areas for improvement. We will seek to learn from previous cases identifying areas of good and poor performance. On occasions, other members of staff may be invited to provide information and advice if appropriate.

c) Compensation

THH has an obligation to collect outstanding rent arrears. If a tenant has rent arrears and is awarded damages/compensation, the Legal Team will contact Income Management and seek to deduct the sum of outstanding arrears before settling with the plaintive solicitors.

All compensation is to be granted within the guidance of the Compensation Policy.

Commercial decisions will be encouraged to be taken by THH in consultation with LBTH to ensure the financial liability is minimised.

d) Complaints

THH will deal with complaints about its Disrepair process in accordance with the Complaints Policy.

Appendix 1

11 Repairing obligations in short leases.

(1) In a lease to which this section applies (as to which, see sections 13 and 14) there is implied a covenant by the lessor—

(a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),

(b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and

(c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

[F1(1A)] If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant implied by subsection (1) shall have effect as if—

(a) the reference in paragraph (a) of that subsection to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest; and

(b) any reference in paragraphs (b) and (c) of that subsection to an installation in the dwelling-house included a reference to an installation which, directly or indirectly, serves the dwelling-house and which either—

(i) forms part of any part of a building in which the lessor has an estate or interest; or

(ii) is owned by the lessor or under his control.

(1B) Nothing in subsection (1A) shall be construed as requiring the lessor to carry out any works or repairs unless the disrepair (or failure to maintain in working order) is such as to affect the lessee's enjoyment of the dwelling-house or of any common parts, as defined in section 60(1) of the Landlord and Tenant Act **M1**1987, which the lessee, as such, is entitled to use.]

(2) The covenant implied by subsection (1) ("the lessor's repairing covenant") shall not be construed as requiring the lessor—

(a) to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on his part,

(b)to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident, or

(c)to keep in repair or maintain anything which the lessee is entitled to remove from the dwelling-house.

(3)In determining the standard of repair required by the lessor's repairing covenant, regard shall be had to the age, character and prospective life of the dwelling-house and the locality in which it is situated.

[F2(3A)In any case where—

(a)the lessor's repairing covenant has effect as mentioned in subsection (1A), and

(b)in order to comply with the covenant the lessor needs to carry out works or repairs otherwise than in, or to an installation in, the dwelling-house, and

(c)the lessor does not have a sufficient right in the part of the building or the installation concerned to enable him to carry out the required works or repairs, then, in any proceedings relating to a failure to comply with the lessor's repairing covenant, so far as it requires the lessor to carry out the works or repairs in question, it shall be a defence for the lessor to prove that he used all reasonable endeavours to obtain, but was unable to obtain, such rights as would be adequate to enable him to carry out the works or repairs.]

(4)A covenant by the lessee for the repair of the premises is of no effect so far as it relates to the matters mentioned in subsection (1)(a) to (c), except so far as it imposes on the lessee any of the requirements mentioned in subsection (2)(a) or (c).

(5)The reference in subsection (4) to a covenant by the lessee for the repair of the premises includes a covenant—

(a)to put in repair or deliver up in repair,

(b)to paint, point or render,

(c)to pay money in lieu of repairs by the lessee, or

(d)to pay money on account of repairs by the lessor.

(6)In a lease in which the lessor's repairing covenant is implied there is also implied a covenant by the lessee that the lessor, or any person authorised by him in writing, may at reasonable times of the day and on giving 24 hours' notice in writing to the occupier, enter the premises comprised in the lease for the purpose of viewing their condition and state of repair.