



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

ROYAL BOROUGH OF KENSINGTON & CHELSEA HOUSING MANAGEMENT

DISREPAIR POLICY

(Draft)

1 CONTENTS

1	CONTENTS	2
2	Introduction	3
3	Aims and Objectives	3
4	The RBKC Position Statement	3
5	Legal Context.....	4
6	Related documents	4
7	What Is Disrepair and the Pre-action protocol?	4
8	Housing Management’s responsibilities	5
9	Disrepair claims criteria and the Early Notification Letter.....	5
10	RBKC’s response overview to the letter of claim	6
11	The Appointment of Experts	6
12	Limitations.....	7
13	Liability of costs for non-compliance.....	7
14	Equalities Statement.....	8
15	The General Data Protection Regulation (GDPR) and the UK Data Protection Act 2018	8
16	Compliance, Monitoring and Review.....	8

2 Introduction

- 2.1 This policy outlines what disrepair is and how the Council deals with cases of disrepair. It also sets out the Council's and residents' responsibilities in these cases.
- 2.2 This policy is based on the Pre-Action Protocol for housing conditions claims (England). RBKC aims to work within the timescales set out in the Protocol to ensure that it is compliant.

3 Aims and Objectives

- 3.1 The specific aims of the policy are:
- To ensure notified repairs are completed as well as any additional works identified following the visit of RBKC and/or the tenants expert.
 - To understand the reason for disrepair claims and ensure that Housing Services learn lessons that can safeguard future risk.
 - To avoid unnecessary litigation
 - To minimise potential claims under the legislation
- 3.2 Our objective is to avoid litigation wherever possible and to follow the pre-action Protocol guidelines on seeking alternative dispute resolution (such as following the complaints procedure) and evidencing this.
- 3.3 Where litigation cannot be avoided, Housing Management aim to ensure the Protocol is followed and all timescales are adhered to. This includes:
- resolving disrepair cases as quickly as possible
 - following good pre-litigation practice
 - ensuring early exchange of accurate information
 - tight management of the contractors engaged to carry out repair works
 - ensuring the processes involved are transparent and monitored
 - empowering staff to make commercial decisions on behalf of RBKC to minimise the costs and damages incurred
 - minimising the number of cases that go to court

4 The RBKC Position Statement

- 4.1 This Disrepair Policy applies to all residential properties owned and managed by RBKC. RBKC must not accept liability or breach of duty for any claims involving an injury prior to reporting and discussing the claim with RBKC insurers.

- 4.2 There may be an overlap between public liability claims and disrepair and in such cases RBKC's insurers should be informed of a related claim under section 11 of the LTA 1985 or Section 82 of the EPA 1990.
- 4.3 Officers will act in accordance with legal advice from RBKC's Legal Team and professionals in this field, so as to avoid existing and future claims.

5 Legal Context

- Landlord and Tenant Act (LTA) 1985 Section 11 and 9a
- Home (Fitness for Human Habitation) Act 2018
- Pre-Action Protocol for Housing Disrepair (England) (the Protocol)
- Section 4 of the Defective Premises Act 1972
- Occupiers Liability Act (OLA) 1957
- Occupiers Liability Act (OLA) 1984
- Environmental Protection Act (EPA) 1990 Section 82
- Housing Act (HA) 2004
- Equality Act (EA) 2010

6 Related documents

- Repairs policy
- Tenants' handbook
- Complaints Policy
- Communal Repairs Procedure
- Compensation and Reimbursement Policy
- Managing Vulnerability Around Repairs & Major Works Policy
- Disrepair Policy

7 What Is Disrepair and the Pre-action protocol?

- 7.1 In terms of housing, disrepair means a home or dwelling that has outstanding defects that the landlord has been made aware of but has not acted upon within a reasonable time.
- 7.2 [The Pre-action Protocol](#), written by the Ministry of Justice, is based on the principle that court action should be treated as a last resort. The Protocol encourages parties to avoid litigation by working towards a resolution to the claim before the resident initiates legal proceedings. The protocol promotes the use of 'experts' to help the different parties agree on the repairs, its causes and any action required to address it.

- 7.3 If a court case is brought forward, the court can ask RBKC or the resident to pay costs if either party failed to comply with the Pre-Action Protocol. This is why our policy is based on and reflects this protocol. For more information on the protocol please use the following link:
https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_hou

8 Housing Management's responsibilities

- 8.1 As a Landlord, RBKC is legally obliged to repair and maintain its properties and 'keep in repair' their property portfolio.
- 8.2 RBKC will try as best as possible to resolve a claim without litigation and through alternative dispute resolution.
- 8.3 In accordance with the protocol, RBKC will disclose all relevant documents regarding the claim of disrepair on the residents' lawyers request through either their early notification letter or letter of claim. For a tenant or leaseholder, 6 years of disclosure information is required as per the Limitation Act 1980.

9 Disrepair claims criteria and the Early Notification Letter

- 9.1 Tenants/leaseholders should be aware that the Early Notification Letter is not intended to replace the direct reporting of defects to RBKC at an early stage. The Pre-Action Protocol is to be used in those cases where, despite RBKC's knowledge of the disrepair, it remains unresolved.
- 9.2 For a Disrepair claim to develop and liability to arise, the tenant must prove that:
- The defect falls within the repairing obligations of RBKC (please refer to the Tenants Handbook/Repairs Policy or Tenancy/Lease Agreement).
 - That tenant/leaseholder reported the defect to RBKC so they were aware of it.
 - That RBKC failed to remedy the defect within a 'reasonable period' (the length of time depends on the nature of the problem and the priority it was given).
- 9.3 The tenant's/leaseholder's representative should consider if an alternative dispute resolution (ADR) procedure (such as mediation or RBKC's complaints procedure) would be more suitable than litigation and if so, try to agree which form of ADR to use with RBKC. As both the landlord and the tenant may be required by the court to provide evidence that alternative means of resolving their dispute were considered.

- 9.4 The tenant's/leaseholder's representative should provide dates and times in the Early Notification Letter of when they are able to give reasonable access to RBKC to carry out an inspection and remedial works.
- 9.5 Tenant's/leaseholder's are required to provide RBKC access to their home to carry out a prompt inspection.
- 9.6 For an extensive list of what should be included in the Early Notification letter please refer to the Pre-Action Protocol.

10 RBKC's response overview to the letter of claim

- 10.1 RBKC will reply to the tenant's letter of claim, including:
- All relevant documents.
 - Whether liability is admitted and if so, in respect of which defects.
 - If liability is disputed and the reasons for this.
 - Any points RBKC wishes to raise but not limited to the following; lack of notice of the repair or difficulty in gaining access to the property to carry out the repair(s).
 - A schedule of intended works (if available)
- 10.2 RBKC's allocated lawyer will reply to the early notification letter/ letter of claim from the resident and/or their legal representative within 20 working days of receiving it.
- 10.3 For an extensive list of what is included in the response letter to the tenant's letter of claim please refer to the Pre-Action Protocol.

11 The Appointment of Experts

- 11.1 RBKC aim to inspect the property within 20 working days of the tenant's first letter. RBKC prefers to inspect the property as a single expert or a joint inspection basis.
- 11.2 RBKC will always inspect the property upon receipt of the letter of claim to ensure a prompt response to any claim.
- 11.3 If a joint inspection is agreed, RBKC 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 as per the terms of their funding arrangements with their solicitor.

- 11.4 Following the inspection and agreement of works, RBKC will follow on with organizing repairs and managing the work until completion. At all times, the residents' lawyer will be advised of progress.
- 11.5 For an extensive list of options regarding the appointment of experts please refer to the Pre-Action Protocol.

12 Limitations

- 12.1 The Council understands the importance of focusing on solutions when managing this process. However, there are certain exceptions to what the Council cannot be held accountable for, such as the following:
- 12.2 The Council is not responsible for unfitness caused by the tenant's failure to behave in a tenant-like manner or that results from the tenant's/leaseholder's breach of their tenancy/lease agreement.
- 12.3 The Council is not obliged to rebuild or reinstate the dwelling in the case of destruction or damage by fire, storm, flood or other inevitable accident.
- 12.4 The landlord is not obliged to maintain or repair anything the tenant is entitled to remove from the dwelling.
- 12.5 The landlord is not obliged to carry out works or repairs which, if carried out, would put the landlord in breach of any obligation imposed by any enactment (whenever passed or made) – this would include things like breaching planning permission, or listed building consent, or conservation area requirements.
- 12.6 Where the works require the consent of a third party (e.g., a superior landlord or freeholder, a neighbouring leaseholder or owner, or a council) and the landlord has made reasonable endeavours to get that consent, but it has not been given.
- 12.7 This is not to say that RBKC will not support the resident in other ways as RBKC has a duty to support their residents at all times.

13 Liability of costs for non-compliance

- 13.1 For cases where court action cannot be avoided, the court may ask RBKC or the tenant/leaseholder to pay costs if either party failed to comply with the Pre-Action Protocol.

14 Equalities Statement

The Council is committed to promoting fair and equal access to services and equal opportunities in employment, the procurement of goods and as a community leader. The Council's policies, procedures and day to day practices have been established to promote an environment which is free from unlawful and unfair discrimination, while valuing the diversity of all people.

Discrimination on the grounds of race, nationality, ethnic origin, religion or belief, gender, marital status, sexuality, disability and age is not acceptable: the Council will take action to ensure no person using the council's premises or services receives less favourable treatment or is disadvantaged by requirements or conditions that cannot be justified. The Council will tackle inequality, treat all people with dignity and respect and continue to work to improve services for all service users.

15 The General Data Protection Regulation (GDPR) and the UK Data Protection Act 2018

As a directorate of RBKC, Housing Management shares the commitment to ensure that all data is:

- Processed lawfully, fairly and in a transparent manner
- Collected for a specific and legitimate purpose and not used for anything other than this stated purpose, or as provided for in our privacy and fair processing notices
- Relevant and limited to whatever the requirements are for which the data is processed
- Accurate, and where necessary, kept up to date. Any identified inaccuracies will be amended or removed without undue delay
- Stored for as long as required, as specified within RBKC's Records Retention policy
- Secured with appropriate solutions, which protect the data against unauthorised or unlawful processing and accidental loss, destruction or damage.

For further information about the Council's commitment to GDPR, please see the Council's website at www.rbkc.gov.uk.

16 Compliance, Monitoring and Review

This policy will be reviewed in conjunction with the procedure every five years, or when legislative or regulatory changes take place that could affect it. The next review will take place by: September 2029

Performance Management:

RBKC 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.

Monthly Team Reviews:

Regular reviews meetings will be held between RBKC Repairs Team and RBKC Legal Team, to monitor results and identify areas for improvement. Housing Services 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.

Compensation:

RBKC 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 RBKC in consultation with RBKC to ensure the financial liability is minimised.

Complaints:

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