



## Havebury Housing Partnership

# DISREPAIR POLICY

Policy Number	HS 059
Date created	February 2023
Policy Lead Officer	Assistant director of asset management
EIA	Yes - no adjustments required.
Legal Advice (inc date)	Capsticks solicitors, January 2023
Leadership Team Review	23 February 2023
JNC Review	N/A
Approved by (inc date)	Leadership Team - 23 February 2023
Policy Review Due	February 2025, or as policy, legislation or significant lesson learned.

## **1 Introduction**

- 1.1 This policy deals with housing disrepair and injury claims against us, which arise from allegations of disrepair and defective premises. It sets out how we will manage, as well as prevent disrepair claims. It will provide guidance to our teams in managing and dealing with these, with the aim of resolving these as quickly as possible.
- 1.2 Residents should therefore be encouraged to use our complaints process in the first instance and, only if the various stages do not resolve the issue, should they seek legal help. If legal proceedings are brought (this does not include pre court litigation action), then we will stop our internal complaints procedure pending determination of the litigation.
- 1.2 The disrepair policy applies to all our homes let on tenancies and the common parts, if any, of those homes. It applies to residents who hold an assured, starter or assured shorthold tenancy. It does not apply to shared owners, those who have a licence to occupy or lodgers within a home. It also does not apply to property guardians.
- 1.3 An unfitness, or disrepair claim arises when we, as the landlord, are alleged to have failed in our statutory or contractual obligations to keep a home in a state fit for human habitation; or have failed within a reasonable period to put right any issues of repair for which we are responsible.
- 1.4 The claim may be confined to specific performance to compel us to fix issues, or it may include a claim for compensatory damages and/or relate to alleged personal injury. Generally, claims are issued in the County Court, either stand alone or as a counterclaim to a claim we have made ourselves. although a claim can also be made in the Magistrates Court.
- 1.5 Our main objectives through this policy are to:
  - Promote responsive and appropriate repairs which are our responsibility
  - Minimise potential claims for a remedy for disrepair
  - Avoid unnecessary litigation and seek alternative dispute resolution where possible
  - Evidence the above.

## **2 Disrepair Policy**

- 2.1 We will comply with the Civil Procedure Rules Pre-action Protocol for Housing Conditions Claims, noting the Housing Ombudsman Service (HOS) guidance on the same. We will ensure that timescales set out are adhered to, to minimise the impact of the claim and legal costs. Legal costs can begin to accrue even before a claim is issued so early settlement, even before issue of a claim, is advisable.

- 2.2 Under Section 11 of the Landlord and Tenant Act 1985 and under the terms of our tenancy agreement, we are responsible for the exterior, the structure and all major interior repairs of the above let premises.

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.
- 2.5 Tenants remain responsible for minor interior repairs including, but not limited to: unblocking sinks and changing fuses, as documented within the tenancy agreement.
- 2.6 A disrepair claim may arise where the tenant can prove, on the balance of probabilities:
- that the repair falls within the statutory and express provisions of the repairing obligations
  - that we have failed to remedy the repair within a reasonable period of time. What's reasonable will depend on the nature of the problem - please refer to the priority time in the Repairs and Maintenance policy; and
  - that we are aware of the problem, for example that either the tenant has given us notice of the problem or we should be on notice because we visited or inspected the property.
- 2.7 If we fail to deal with the repair within a reasonable period of time following knowledge of repair, we may potentially be liable to pay damages to the tenant, which will be included within their claim against us.

A duty does not arise when:

- The problem is caused by the behaviour of the resident or visiting member of the household.
- It is caused by events such as fires, storms or floods, which are beyond our control (sometimes called 'acts of God').
- The problem is caused by the residents' possessions.
- We have been unable to get consent, for example permission from freeholders. However, there must be evidence of reasonable efforts to gain possession.
- The resident is not an individual, for example, when we lease a property to a company.

- 2.8 The Act does not cover anyone who has a licence to occupy, instead of a tenancy agreement. This may include lodgers (people who live with their landlord) some people who live in temporary accommodation, and some, but not all, property guardians.
- 2.9 Other duties may arise under the Defective Premises Act 1972 or the Environmental Protection Act 1990.
- 2.10 Under s4 of the Defective Premises Act 1972, we have a legal duty to take reasonable care that our let properties (but not communal areas) are safe for “all persons who might reasonably be affected” by disrepair. This includes the tenant, their household and visitors. We may be liable to pay damages to the tenant or any other person for personal injury or damage caused by a defect if we knew or ought to have known of any disrepair present at the property, which we have not repaired within a reasonable period of time.
- 2.11 Each case should be considered on its own facts and after discussion with our insurers.
- 2.12 Where injury or damage occurs in a communal area, the applicable law is the Occupiers Liability Act 1984.
- 2.13 Under section 82 of the Environmental Protection Act 1990 a tenant can bring proceedings in the Magistrates’ court against us if a statutory nuisance under section 79 exists at the property. A statutory nuisance includes “any premises in such a state as to be prejudicial to health or a nuisance”.
- 2.14 There are a number of steps which are required prior to requesting a court hearing:
- Firstly, the tenant must give us at least 21 days written notice of the intention to take proceedings.
  - Secondly, 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 us 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 us and will order us to remove the Statutory Nuisance.
  - The court can also impose a fine and make a compensation Order.

We will be proactive in identifying and preventing disrepair claims. We will:

- Undertake cyclical stock condition surveys every five years, on a rolling programme.
- Invest in our homes in line with our asset management strategy, in order to prevent disrepair.
- Ensure that properties are inspected quickly and any works orders for outstanding works are raised as quickly as possible.
- Have a variety of ways residents can report repairs to us, and we will keep residents updated, where required, with updates on these.
- Make sure our residents know how to report repairs when they move into our homes through the sign-up process.
- Ensure our residents are aware of the likely time it will take to deal with different types of repairs, in accordance with our Repairs and Maintenance policy.
- Be proactive when we visit a residents' home, regardless of the reason. Where we identify repairs, we will discuss these with the resident, and record to be completed.
- Ensure close and effective management of contractors engaged by us to carry out repair works.
- Keep accurate and timely records on our housing management system, including missed and failed appointments and the reasons why.
- Keep our records up to date for non-access and ensure processes are followed.
- Be vigilant to the Fitness for Homes Habitation Act 2018 and 29 Health and Housing Safety Rating System (HHSRS) hazards, as part of our everyday visits to residents' homes, block or scheme inspections.
- Report any identified HHSRS Category 1 hazards to the Strategic Property team, which will be managed alongside our health and safety actions. These will be treated as emergency repairs and attended to within 24 hours to make safe, and/or repair. Where it is not possible to do this, we will work with the resident to provide alternative accommodation.
- Take steps to minimise the opportunities when claims of disrepair can be made as part of other legal proceedings.
- Have a robust damp and mould process. As well as managing and dealing with causes of damp, we will give advice and guidance on how to prevent and manage mould and condensation with a home.
- Where we feel a resident is preventing us from gaining access to undertake inspections or repairs, either through choice, or on the advice of a solicitor acting for them, we will refer this to the HOS.

When we receive a claim:

- When a claim for disrepair is made either under the Pre-Action Protocol for Disrepair Claims or as part of other legal proceedings for tenancy breaches, we will promptly instruct our nominated solicitors to act on our behalf.
- We will continue to directly communicate with our resident regarding access for inspections and repairs, unless it is deemed inappropriate to do so via solicitors.
- We will provide an early exchange of information with the residents' legal representatives if appropriate, after the complaints process has been used.
- We will ensure we are compliant with the Pre-Action Protocol for Housing Disrepair Cases when a claim is received.
- Where liability for disrepair exists, we will ensure repairs are carried out as a priority and customers are awarded a fair payment of compensation.
- We will promote good pre-litigation practice, including the early exchange of information and to give guidance about the instruction of experts.
- Where we feel a resident is preventing us from gaining access, either through choice, or on the advice of a solicitor acting for them, we will refer this to the HOS.

### **3 Review and Reporting**

- 3.1 We will keep accurate records on our housing management system, CX. This includes initial reports, ongoing communications and how we will resolve the issue.
- 3.2 Oversight of these cases will sit with the Service Collaborative Management Team.
- 3.3 Leadership team will have oversight of these on a quarterly basis, as will Homes and Investment Committee and Board

### **4 Legislation and Regulation**

- Housing Health and Safety Rating System (HHSRS)
- Decent Homes Standard
- The Homes (Fitness for Human Habitation) Act 2018
- Landlord and Tenant Act (1985) (amended by above)
- Occupiers Liability Act 1984.
- Defective Premises Act 1972
- Environmental Protection Act 1990

**5. Equality, Diversity and Inclusion**

5.1 We will ensure this policy is applied consistently to residents. We will ensure no person or group of persons is treated no less favourably than any other person or group of persons.

5.2 We have completed an equality impact assessment on this policy.

**6 List of Related Internal Documents (including procedures relating to the Policy)**

Decant policy  
Complaints policy  
Compensation and payments policy  
Repairs and maintenance policy  
HHSRS procedure  
Damp and mould policy and procedure