

Disrepair Policy

Department: Housing & Environment (asset management)

Policy date/last update: June 2025

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1. Introduction

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.

This policy is based on the Pre-Action Protocol for housing conditions claims (England). The London Borough of Ealing aims to work within the timescales set out in the Protocol to ensure that it is compliant.

2. Aims and objectives

The specific aims of the policy are:

- to ensure notified repairs are completed as well as any additional works identified following the visit of the council and/or the tenants expert
- to understand the reason for disrepair claims and ensure that housing teams learn lessons that can safeguard future risk
- to avoid unnecessary litigation
- to minimise the cost of potential claims under the legislation

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.

Where litigation cannot be avoided, asset management aims 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 in particular Alternative Dispute Resolution (ADR)
- 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
- permit commercial decisions on behalf of the council to minimise the costs and damages incurred following the council scheme of delegation
- significantly curtail the number of cases that go to court

3. Disrepair position statement

This disrepair policy applies to all residential properties owned and managed by the London Borough of Ealing. We will not accept liability or breach of duty for any claims involving an injury prior to reporting and discussing the claim with London Borough of Ealing insurers.

There may be an overlap between public liability claims and disrepair, in such

cases LBE's insurers should be informed of a related claim under section 11 of the Landlord and Tenant Act (LTA) 1985 or Section 82 of the Environmental Protection Act (EPA) 1990.

Council officers will act in accordance with legal advice from the council's legal team and professionals in this field, so as to avoid existing and future claims.

4. 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

5. Related documents

- Repairs & Maintenance Policy
- Tenants' handbook
- Repairs Handbook
- Complaints Policy
- Compensation and Reimbursement Policy

6. What Is disrepair and the Pre-Action Protocol?

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.

[The Pre-Action Protocol](#), outlined on the Ministry of Justice website, 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, the causes and any action required to address issues.

If a court case is brought forward, the court can ask the council or the resident to pay costs if either party fails 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

7. Responsibilities of asset management department

As a Landlord, the London Borough of Ealing is legally obliged to repair and maintain its properties and keep properties in a good state of repair.

We will try as best as possible to resolve a claim without litigation and through alternative dispute resolution (ADR).

In accordance with the protocol, we 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.

8. Disrepair claims criteria and the Early Notification Letter

Tenants/leaseholders should be aware that the early notification letter is not intended to replace the direct reporting of defects to the council at an early stage. The Pre-Action Protocol is to be used in those cases where, despite the council's knowledge of the disrepair, it remains unresolved.

For a disrepair claim to develop and liability to arise, the tenant must prove that:

- the defect falls within the repairing obligations of LBE (please refer to the Tenants Handbook/Repairs Policy or Tenancy/Lease Agreement)
[repairs_handbook.pdf](#)
- that tenant/leaseholder notified the defect to LBE, so we were aware of it
- That the council 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)

The tenant's/leaseholder's representative should consider if an alternative dispute resolution (ADR) procedure (such as mediation or LBE's complaints procedure) would be more suitable than litigation and if so, try to agree which

form of ADR to use with the council. 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.

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 the council to carry out an inspection and remedial works.

Tenants/leaseholders are required to provide the council with access to their home to carry out a prompt inspection.

For an extensive list of what should be included in the Early Notification letter please refer to the Pre-Action Protocol.

9. LB Ealing's response overview to the letter of claim

We 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 the council 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)

The council's allocated fee-earner 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.

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.

10. The appointment of experts

The council aims to inspect the property within 20 working days of the tenant's first letter. The council prefers to inspect the property as a single expert or on a joint inspection basis.

We will always inspect the property upon receipt of the letter of claim to ensure a prompt response to any claim.

If a joint inspection is agreed, we will pay the full cost of an 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.

Following the inspection and agreement of works, we will follow on with organizing repairs and managing the work until completion. At all times, the residents' lawyer will be advised of progress.

For an extensive list of options regarding the appointment of experts please refer to the Pre-Action Protocol.

11. Limitations

LBE is mindful of 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:

- 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
- rebuilding or reinstating the dwelling in the case of destruction or damage by fire, storm, flood or other inevitable accident

The landlord is not obliged to maintain or repair anything the tenant is entitled to remove from the dwelling.

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.

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 endeavors to get that consent, but it has not been given.

12. Liability of costs for non-compliance

For cases where court action cannot be avoided, the court may ask the council or the tenant/leaseholder to pay costs if either party failed to comply

with the Pre-Action Protocol.

13. 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
- belief
- gender
- marital status
- sexuality
- disability
- 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.

14. The GDPR Regulations & UK Data Protection Act 2018

As a directorate of the council, the Housing and Environment Directorate 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 LBE 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 [Introduction](#) | [Privacy notice](#) | [Ealing Council](#)

15. Compliance, monitoring and review

This policy will be reviewed in conjunction with the procedure every three years, or when legislative or regulatory changes take place that could affect it. The next review will take place by: June 2028.

16. Performance management

The council will continually monitor the performance of disrepair on a weekly and monthly basis to ensure maximum efficiency and effectiveness throughout. All quality issues will be dealt with at the site level, through receiving a post inspection of all work undertaken that is associated with the claim. Performance in terms of timely progression of legal steps and decision making to avoid escalation of the case.

17. Weekly settlement meetings

Regular reviews meetings will be held between the complex repairs team and legal teams, primarily to make decisions on case management. In addition, the team will 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.

18. Compensation

The council 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 the council in consultation with legal to ensure that the financial liability is minimised.

19. Complaints

The council will deal with complaints about its disrepair process in accordance with the complaints policy.