



Uttlesford District Council

Housing

Disrepair Policy

DRAFT

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Disrepair Policy

1.0 POLICY STATEMENT

- 1.1 The Council's objective is to follow the pre-action Protocol guidelines on seeking alternative dispute resolution (such as following the complaints procedure) and evidencing this.
- 1.2 This is with the aim of avoiding legal action wherever possible and limiting the monies spent on legal proceedings.

2.0 DEFINITIONS

- 2.1 **Alternative Dispute Resolution (ADR)** - methods of resolving disputes without legal action. ADR includes processes such as mediation and arbitration, where a neutral third party helps parties come to an agreement outside of the courtroom.
- 2.2 **Scott Schedule** - document submitted to a court in the United Kingdom detailing the complaints regarding a third party which the court is being asked to consider.
- 2.2 **Tenant** – this term in this policy is used to cover both tenants and leaseholders.

3.0 INTRODUCTION

- 3.1 This policy outlines what disrepair is and how the Uttlesford Council (The Council) deals with cases of disrepair. It also sets out the Council's and residents' responsibilities in these cases.
- 3.2 This policy is based on the Pre-Action Protocol for housing conditions claims (England). The Council aims to work within the timescales set out in the Protocol to ensure that it is compliant.
- 3.3 The policy and underpinning procedure will enable the Council to effectively manage, monitor, and reduce the number of disrepair claims from residents.

4.0 AIMS OF POLICY

- 4.1 The specific aims of the policy are:
 - To ensure notified repairs are completed as well as any additional works identified following the visit of Uttlesford and/or the tenants expert.
 - To understand the reason for disrepair claims and ensure that the Council learns lessons that can safeguard future risk.
 - To avoid unnecessary legal action
 - To minimise potential claims under the legislation
- 4.2 Where litigation cannot be avoided, the Council aims to ensure the Protocol is followed and all timescales are adhered to.

- 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 the Council to minimise the costs and damages incurred
- minimising the number of cases that go to court

5.0 Tenant Responsibilities

5.1 Tenants are responsible for minor interior repairs and can assist in addressing disrepair by following the guidance given in the repairs and maintenance policy including,

- Reporting repairs promptly, where Uttlesford is responsible in line with tenancy agreements.
- Providing access for repairs
- Ensuring vents are not restricted to maintain adequate ventilation in the property.

5.2 In the event that repairs are not completed satisfactorily following a service request tenants should therefore be encouraged to use our complaints process in the first instance. Only if the various stages do not resolve the issue, should they seek legal help.

5.3 Disrepair within the criteria set is for the Landlord to respond to and address. There are some limitations set out in the policy that again partly relate to tenant responsibility, (e.g. the tenant's failure to behave in a responsible tenant-like manner).

6.0 Disrepair Legislation

6.1 There are several specific pieces of legislation of particular relevance to the identification and management of disrepair.

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

6.3 Other duties may arise under the Defective Premises Act 1972 or the Environmental Protection Act 1990.

6.4 Under s4 of the Defective Premises Act 1972, the Council has 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.

6.5 Where injury or damage occurs in a communal area, the applicable law is the Occupiers Liability Act 1984.

6.6 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."

7.0 **What is Disrepair?**

7.1 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 of time to put right any issues of repair for which we are responsible. This can be measured against the Uttlesford lettable property standard.

7.2 This can be failing to repair, damage or deterioration to the exterior that is connected to or forms part of the actual dwelling or interior of the house or flat, their structure and common parts in case of a building divided into flats.

7.3 The tenancy agreement or lease outlines whose responsibility it is to maintain the property and failure to do so can result in a housing disrepair claim being made.

7.4 Housing disrepair is not limited to just physical deterioration. It can be an infestation, mould problems, broken boiler, plumbing or gutter issues; anything that prevents a tenant from being able to live normally in their home.

Disrepair Criteria

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

- The defect falls within the repairing obligations of the Council
- That tenant reported the defect to the Council, so they 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).

8.0 **Housing Disrepair Protocol**

8.1 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 describes the conduct that the court will expect the parties to follow in a housing disrepair claim prior to the start of legal proceedings.

8.2 It is intended to encourage the exchange of information between parties at an early stage and to provide a clear framework within which parties can attempt to achieve an early and appropriate resolution of the issues.

8.3 Where repairs have not been completed to a decent standard or within a reasonable timeframe, then the aim is to avoid the need for litigation wherever possible, by following the Housing Disrepair Protocol guidelines on seeking alternative dispute resolution.

- 8.4 Where litigation cannot be avoided, the Council aims to ensure the Housing Disrepair Protocol is followed and all timescales are adhered to minimise the impact of the claim.

9.0 Housing Disrepair Protocol Stages

- 9.1 The main components of the Protocol are:

Alternative Dispute Resolution

- 9.2 The Council will always try to settle any disrepair claim without court action and will consider using all available forms of Alternative Dispute Resolution (ADR) including its complaints and compensation processes to avoid the necessity for court action as outlined in the pre-action protocol.

Appointment of Experts

- 9.3 The Protocol encourages the use of a single joint expert, and the Council will adopt this approach wherever possible. If the Council and the customer cannot agree on a single joint expert, either with joint or separate instructions, the Protocol suggests a joint inspection by each party's expert.

Liability of costs for non-compliance

- 9.4 For cases where court action cannot be avoided, the court may ask the Council or the resident to pay costs if either party failed to comply with the Pre-Action Protocol.

10.0 Disrepair Management Process

- 10.1 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.
- 10.2 The Council will try as best as possible to resolve a claim without litigation and through alternative dispute resolution.
- 10.3 The tenant's representative should consider if an alternative dispute resolution (ADR) procedure (such as mediation or the Council's complaints procedure) would be more suitable than litigation and if so, try to agree which form of ADR to use with the Council.
- 10.4 Both the landlord and the tenant may be required by the court to provide evidence that alternative means of resolving their dispute were considered.

Disrepair Notification/Receipt

- 10.5 Upon receipt of a disrepair claim the Council will acknowledge the claim within 5

working days.

Early Notification Letter

- 10.6 The tenant'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.
- 10.7 Tenants are required to provide the Council access to their home to carry out a prompt inspection.
- 10.8 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.

The Council's response to the letter of claim

- 10.9 The Council will reply to the tenant's/leaseholder's letter of claim, including:
 - 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)
- 10.10 The Council'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.

Inspection Process

- 10.11 The Council aims to inspect the property within 20 working days of the tenant's first letter.
- 10.12 Where agreement can be made with the claimant on a single or joint expert inspection, we will arrange an appointment to inspect the property within 20 days. The customer will be notified of the date of the inspection in writing giving 7 days' notice for access unless an earlier date is agreed by both parties.
- 10.13 Should a customer continue to refuse or hinder access for the survey or works to be completed then the Council will raise concerns via its legal representative.
- 10.14 Where an agreement cannot be made and inspected within this timeframe we will work with the claimant or their representative to agree a suitable extension to this timeframe.
- 10.15 The purpose of the inspection is to identify any repairs and which if any elements fall under disrepair legislation.

- 10.16 If a single expert inspection is agreed a report should be sent to both parties within 10 days of the inspection date.
- 10.17 If a joint inspection is agreed then, the experts should produce a joint Scott Schedule, with an agreed schedule of works detailing the defects, required works which are agreed and a timetable for the agreed works together with any areas of disagreement and the reasons for the disagreement.
- 10.18 The agreed Scott Schedule should be sent to both parties within 10 working days of the joint inspection taking place.
- 10.19 Once the works schedule is agreed the Council will complete the identified repairs within a reasonable timeframe based on the work involved and provide appointments dates in writing to the customer.
- 10.20 Where it is agreed that the Council has not completed its repairs responsibilities under disrepair legislation, we will assess and establish liability and negotiate with the customers representative, to agree a suitable and reasonable settlement to avoid litigation where possible.
- 10.21 Where we are unable to agree liability or settle the matter by negotiation the Council reserves its right to defend matters in a court of law.

The Appointment of Experts

- 10.22 The Council prefers to inspect the property via joint inspection rather than single expert.
- 10.23 The Council will always inspect the property upon receipt of the letter of claim to ensure a prompt response to any claim.
- 10.24 If a joint inspection is agreed, the Council 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.
- 10.25 Following the inspection and agreement of works, the Council will follow on with organizing repairs and managing the work until completion. At all times, the residents' lawyer will be advised of progress.

Court Hearing

- 10.26 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.
- 10.27 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.

11.0 Limitations on Disrepair Claims

- 11.1 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 breach of their tenancy/lease agreement.
- 11.2 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.
- 11.3 The landlord is not obliged to maintain or repair anything the tenant is entitled to remove from the dwelling.
- 11.4 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.
- 11.5 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.

12.0 Preventative & Pro-active Approach

- 12.1 We will be proactive in identifying and preventing disrepair claims.
 - Using intelligence from disrepair cases to identify potentially systemic issues and feed into their long-term asset management strategy to prevent similar cases.
 - 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.
 - 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 Director of Property Services and the Contract Liaison Manager which will be managed alongside our health and safety actions.
 - 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 Strategic Director of Housing. For a decision on gaining access in the first instance. This may include further use of alternative dispute resolution (ADR), engagement with solicitor or possible proceeding to court.

13.0 Preventing and Managing Damp

13.1 The council provides advice on its website and in a leaflet "***Preventing damp and mould in your home***" on how to deal with dampness. This includes day to day preventative measures and remedial measures. Some examples are given below.

Prevention

- Cover pans when cooking and switch on extractor fans
- If possible, move furniture away from walls and radiators to allow air to flow between them
- Wipe down walls and tiles after showers and baths
- Clean vents and extractor fans regularly and make sure they are not blocked by furniture
- If you have trickle vents on your window frames, make sure they are open
- Open windows for 5 or 10 minutes when getting up, to let fresh air in and let warm moisture out

13.2 Please refer to the leaflet or Uttlesford website for more detailed information.

14.0 Performance Management and Measures

14.1 The performance measures are:

- Number of cases received in the month
- Number of cases closed in the month (no response)
- Number of cases settled in the month
- Number of open cases
- Time taken in days to complete protocol (target 20 days)
- Amount of compensation paid
- Amount of legal fees paid

14.2 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.

- The Council will undertake satisfaction surveys with customers on work conducted and complete - 100%
- Post inspection surveys - 100%

15.0 Compensation

- 15.1 If disrepair has made your home unsafe or uncomfortable we will consider whether some compensation is appropriate. Our compensation policy provides more details about quantifiable and discretionary compensation.
- 15.2 The Council has an obligation to collect outstanding rent arrears. If a tenant has rent arrears and is awarded damages/compensation, the Council seek to deduct the sum of outstanding arrears before settling with the claimant's solicitors.
- 15.3 All compensation is to be granted within the guidance of the Compensation Policy. Please see the policy in the link provided [Insert link here]

16.0 Review & Reporting

- 16.1 We will keep accurate records on our housing management system, Northgate NEC.

17.0 Equality, Diversity and Inclusion

- 17.1 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.
- 17.2 We have completed an equality impact assessment on this policy.

ROLES AND RESPONSIBILITIES

Role:	Responsibilities:
Strategic Director, Housing, Environment and Communities	<ul style="list-style-type: none"> ▪ Review of the policy
Service Director	<ul style="list-style-type: none"> ▪ Review of overall service delivery ▪
Surveyor	<ul style="list-style-type: none"> ▪ Recording and investigation of incidents of Disrepair. ▪ Drawing up and implementing work schedules. ▪ Risk assessment of individual cases. ▪ Recommendations for reasonable adjustments as required including decants. ▪ Periodic reviews of cases on the Disrepair Register.
Housing Officer	<ul style="list-style-type: none"> ▪ Advise of the vulnerability of resident that might trigger making further reasonable adjustments. (E.g. Temporary move).

KEY CONTACT

- Lead Officer: Simone Russell
- Service Area/Directorate: Housing, Environment & Communities.

Landlord Services

- Lead Member: Councillor Arthur Coote

LINK TO CORPORATE PLAN PRIORITIES

Corporate Priorities	Yes/No
Putting residents first	Yes
Protecting and enhancing our environment	No
Building strong communities	Yes
Encouraging economic growth	No

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Date	Amendments Made	By Whom	Approval
21/01/2025	Outline	A Alexander	
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04/02/2025	Second Draft	A Alexander	
11/06/2025	Final Draft	A Alexander	
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<i>Date Adopted</i>			
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CONTEXTUAL INFORMATION

Update Overview

This policy will be reviewed every 3 years or if there are any major changes in legislation that may impact on this policy. A review may be required earlier depending on legislation issued around Awaab's Law.

Legislative 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

Local Government Context

Uttlesford District Council has a duty as a landlord to repair and maintain its properties.

In 2021 the Housing Ombudsman issued new guidance for landlords on disrepair claims and the complaints process.

The Council is committed to meeting the Regulator of Social Housing's Consumer Standards. The Disrepair Policy plays a key role in delivering this, by ensuring that reported disrepair issues and claims are handled in a way that protects tenants, supports safe living environments and builds trust in the services.

UDC Policy History

Policy Scope: Resident and/or Internal

This policy provides guidance to residents on how the Council will address reports received of Disrepair.

Related Policies & Corporate Governance Matters

Repairs and Maintenance Policy
Dampness, Mould and Condensation Policy
Decant Policy
Complaints Policy
Compensation Policy
Access to Services Policy
Reasonable Adjustments Policy

POLICY MONITORING

The policy will be monitored by the Strategic Director, Housing, Environment and Communities. The policy should be reviewed on an annual basis to ensure that compliance is achieved.

COMPLAINT, CHANGE & MODIFICATION

Complaint

Complaints made in relation to this policy, or its application shall follow the Council's corporate complaint policy

Modification

Minor changes will be signed off by the appropriate service Director following CMT approval.

Substantial changes will be referred to the CMT for approval.

The decision on what changes will constitute minor or substantial change will be determined by CMT.

Change

The Strategic Director, Housing, Environment and Communities shall be responsible for reviewing /updating the policy in accordance with changes to best practice, statutory guidance and legislation.

Substantial changes made shall be presented to CMT for formal approval.

Reference Section.

APPENDIX A – Equality Impact Assessment

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