

Meeting:	Operations Committee
Date:	8 February 2023
Subject of Report:	Legal Disrepair Policy
Agenda Item:	06.2
Action Required:	For Committee to approve
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Purpose of the Report
The aim of this policy is to provide a clear framework for colleagues dealing with housing disrepair and injury claims arising from allegations of disrepair and defective premises claims. It will ensure clarity, consistency and when implemented this will create an audit trail.
Background Narrative and Context (including Equality, Diversity, and Inclusion Assessment)
This policy has undergone an equality impact assessment.
Recommendations & Decision Required
For the Committee to approve.
Links to Nehemiah's Strategic Objectives
<ul style="list-style-type: none"> • Deliver excellent customer services with respect. • Investing in our Homes
Key Risks and/or Financial Implications
<p><u>Key Risks</u> Ensuring all our homes are compliant.</p> <p><u>Financial Implications</u> Effective management of our repairs and maintenance stock and taking account of any H&S issues is essential in achieving key aspects of our KPI and is fundamental in maintaining our financial ability.</p>
Assurance Levels (1st Line Defence – Department, 2nd Line of Defence – Oversight and 3rd Line Defence - Independent Assurance)
First and second line of defence provided, with 3rd line applied in line with internal audit strategy in their review of our processes and systems against specific policies periodically.
Cost Implications (including use of cash, time, and other resources, where will funds come from? Including VFM Considerations)
All relevant costs are fully budgeted.
Parties Consulted Prior to Meeting (inc. Officers, Committees and/or Legal Advice)
None
Appendices (list)

POLICY DOCUMENT CONTROL

Commentary	Policy Review
Document Title	Legal Disrepair Policy
Description	The aim of this policy is to provide a clear framework for colleagues dealing with housing disrepair and injury claims arising from allegations of disrepair and defective premises claims. It will ensure clarity, consistency and when implemented this will create an audit trail.
Location of document Link	"I:\Committee Papers\Operations\Operations 2024\Operations 08.02.2024\Legal Disrepair Policy.docx"
Published/Definitive Version No.	1
Adoption Date	February 2024
Review Date	
Next Review Due	May 2027
Author Name, job title and contact details	Mike Idowu, Property Services Manager Michael.idowu@nehemiah.co.uk
Consultation with (i.e., Exec, committee)	Kevin Fearon
Reviewing Committee Prior to Board	Operations Committee
Approving Body	The Operations Committee
Approval Date	February 2024
Readership/Audience	All Staff working for and on behalf of Nehemiah HA
Information/Governance Classification (Restricted/unrestricted Access)	Unrestricted

Policy Title	Legal Disrepair Policy
Date Adopted	02/2024
Review Date	
Date of Next Review	05/2027



LEGAL DISREPAIR POLICY

Contents Page

1.0	Introduction
2.0	Background / Introduction
3.0	Legislation, Statutory Regulatory duties & references
4.0	Disrepair Policy Principles and Objectives
5.0	The Main Principles / Policy
6.0	Service Standards
7.0	Equality and Diversity

1.0 Introduction

- 1.1** The aim of this policy is to provide a clear framework for colleagues dealing with housing disrepair and injury claims arising from allegations of disrepair and defective premises claims. It will ensure clarity, consistency and when implemented this will create an audit trail.
- 1.2** 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 maintain homes and provide an excellent repairs and maintenance service.
 - To minimise potential claims under the legislation.
 - To avoid unnecessary litigation.

To promote responsive and appropriate repairs which are the landlord's responsibility.

- 1.3** This policy will be reviewed three yearly, 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.

2.0 Background / Introduction

- 2.1** As a landlord Nehemiah Housing is legally obliged to repair and maintain the homes its customers live in 'keep in repair' the property portfolio.
- 2.2** Nehemiah Housing Disrepair Policy applies to all residential properties owned and managed by Nehemiah.
- 2.3** 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.
- 2.4** Nehemiah will not accept liability or breach of duty for any claims involving an injury prior to reporting and discussing the claim with the Executive lead, Risk Management, and our Insurance company.
- 2.5** There may be an overlap between public liability claims and disrepair and, in such cases, the Executive team Risk Management team and our Insurance must be informed of a related claim under section 11 of the LTA 1985 or Section 82 of the EPA 1990.

3.0 Legislation, Statutory Regulatory duties & references

3.1 We will ensure that we carry out disrepair claims in accordance with best practice and relevant policy and legislation, including the following:

- 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 Housing Health and Safety Rating System (HHSRS) and Decent Homes Standard.
- Equality Act 2010.
- Homes (Fitness for Human Habitation) Act 2018.
- The Building Act 1984.
- Building Safety Act 2022.
- Control of Asbestos Regulations 2012.
- Health and Safety at Work Act 1974 and.
- Construction Design and Management regulations 2015

4.0 Disrepair Policy Principles and Objectives

4.1 The main objective is to maintain homes and provide an excellent repairs and maintenance service, 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, minimising 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 colleagues to make commercial decisions on behalf of Coastline to minimise the costs and damages incurred; and
- Minimising the number of cases proceeding to court

5.0 The Main Principles / Policy

- 5.1 Representatives of Nehemiah will comply with the legislation, to effectively deal with any disrepair and/or injury from disrepair claims against the organisation. The Representatives and managers will act as the responsible people to ensure that Nehemiah is protected against any inappropriate claims and the best interests of Nehemiah are always protected.
- 5.2 The Operations Director and the Property Services Manager will have overall responsibility for the Disrepair Policy and its implementation throughout Nehemiah and communicating lessons learned. Ownership of all matters arising out of Disrepair and injury claims will be within the remit of the Operations department.
- 5.3 Nehemiah will always be proactive 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.
 - instigating action for legal access if access is refused for completion of remedial works.
 - Learning outcomes from current and historic disrepair claims; and the Operations Department of Nehemiah mainly the Property Services Manager will review all Disrepair claims on a regular basis to ensure all areas are being delivered according to the policy.
- 5.4 Case reviews will be conducted by Nehemiah to gain knowledge from lessons learned, both through claims that are lost at trail /settled as well as claims that are successfully defended by Nehemiah Housing.
- 5.5 This policy is not a complete legal statement in terms of the above-mentioned Acts (in para 3.1) but merely a guideline as to how Nehemiah will approach Disrepair and claims. Nehemiah will always act in accordance with legal advice from Nehemiah professionals in this field, to avoid existing and future claims.

5.6 Housing Disrepair Protocol – pre action protocol for disrepair

- 5.6.1 Nehemiah 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.
- 5.6.2 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: [Pre-Action Protocol for Housing Conditions Claims \(England\) - Civil Procedure Rules \(justice.gov.uk\)](https://www.justice.gov.uk/pre-action-protocol-for-housing-conditions-claims)

5.6.3 The main components of the Protocol are:

- Alternative Dispute Resolution.

Nehemiah will always try to settle any disrepair claim without court action to save public money and attempt to resolve customer issues faster. We will consider using all available forms of Alternative Dispute Resolution to avoid the necessity for court action as outlined in the pre-action protocol.

- Appointment of Experts

The Protocol encourages the use of a single joint expert and Nehemiah will adopt this approach wherever possible. To make it less likely that a second expert will be necessary, the Protocol provides for Nehemiah to forward their own instructions directly to a single joint expert. Both parties can ask relevant questions of the expert.

If Nehemiah 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 Nehemiah and the resident each party will pay one half of the cost of the report.

If a single joint expert is not agreed, Nehemiah's appointed expert and the resident's expert should arrange a joint inspection of the property.

Nehemiah 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.

- Liability of costs for non-compliance.

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

5.7 Section 11 Landlord and Tenant Act 1985

5.7.1 There is an implied duty under Section 11 of the Landlord and Tenant Act 1985 as well as the express repairing provisions within Nehemiah tenancy agreements. These place Nehemiah under a duty to maintain properties to the required standard allowing the tenant to exercise quiet enjoyment of their property.

5.7.2 Under Section 11, Nehemiah is responsible for the exterior, the structure and all major interior repairs unless noted in the Tenancy Agreement.

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 no 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.

5.7.3 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).

5.7.4 It is important to note that if Nehemiah fails to deal with the defect within a 'reasonable period' following receipt of notice of the defect from the tenant, Nehemiah, 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 the defect remained outstanding. "Reasonable period" is not defined; however, reference should be made to the priority times for repairs set by Nehemiah's published in the Repairs and Maintenance Policy.

5.7.5 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 representative of Nehemiah.

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

5.8 Section 4 Defective Premises Act 1972

5.8.1 This legislation sets out additional obligations upon Landlords. Where premises are let under a tenancy, Nehemiah 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.

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

5.8.3 Each case will be considered on its own merit in accordance with the facts and after discussion with Nehemiah insurers. Nehemiah 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.

5.8.4 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 because of a “relevant defect”.

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

5.8.5 Nehemiah must have constructive or actual notice, or imputed notice, (Nehemiah ought to have known 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 because of disrepair. This element is covered by insurance and claims for injury under Section 4 will be dealt with by Nehemiah’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 Nehemiah maintenance colleagues 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. Nehemiah are deemed to have had “constructive notice” of repairs in common areas. Thus, they are expected to carry out repairs according to their priority as soon as they become apparent so a regular inspection regime will be required; this (as well as any health and safety concerns noted) is incorporated into the regular reporting regime by the cleaning team.

6.0 Service Standards

- 6.1** Nehemiah will ensure that all tenants who make a claim for disrepair are treated equally, so that no particular section of the community is discriminated against.
- 6.2** The Repairs Team will analyse disrepair claims by locality/community, to establish if a disproportionate number of claims are being made by tenants in any one area. Further investigation will take place if findings show this to be the case.
- 6.3** Nehemiah 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.

7.0 Equality and Diversity

This Policy will be applied in a way which ensures equality of treatment for all customers without discrimination, or victimisation on account of any protected characteristic as defined within the Equality Act 2010. In drafting this policy NHA has had regard to its public sector equality duties under s149 of the Equality Act 2010, namely the need to:

- Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited under the Act.
- Advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The policy pays regard to diversities around access to and delivery of any services.

An Equality Impact Assessment (EIA) has been undertaken on this policy and copies of the EIAs are available upon request.

On request NHA will provide translations of all its documents, policies and procedures in various languages and formats including computer disc, braille, large print, and tape.