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Disrepair Policy

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1 Introduction and Purpose

1.1 West Kent aims to keep our properties in good condition by dealing with repairs and preventing disrepair claims. We seek to avoid court action and use the Government's Pre-Action Protocol for disrepair cases or alternative dispute resolution as appropriate. We expect residents to carry out repairs that are their responsibility and to report any repairs that are our responsibility to us promptly and give us access to carry out the repairs

1.2 The purpose of this policy is to help minimise disrepair claims and avoid litigation where possible by:

- Providing clear guidelines for the management of disrepair claims from the early stages
- Investigating and responding to disrepair claims promptly and effectively
- Ensuring effective management and completion of repairs identified in potential claims
- Working in partnership with all necessary internal departments

2 Scope

2.1 This policy covers disrepair claims for residential properties owned or managed by West Kent. It covers claims made pursuant to expressed and/or implied terms of a tenancy agreement or lease; common law nuisance and negligence and statutory provisions including:

- Environmental Protection Act 1990
- Landlord and Tenant Act 1985
- Defective Premises Act 1972
- Homes (Fitness for Human Habitation) Act 2018

2.2 Any disrepair claims involving personal injury must be reported to the West Kent insurance team. This policy applies to:

- All West Kent residents
- West Kent staff who deal with disrepair claims
- Any West Kent partners or contractors whose services can lead to disrepair claims

3 Policy Statement

3.1 Legal disrepair: For the purposes of this policy, disrepair is defined as, a fault or defect with a property for which a landlord is responsible, knows about, and does not repair within a reasonable time.

West Kent tenants who need a repair to their home for which we are responsible for, should report this to Customer Service Centre, who will arrange for the repair to be carried out or direct it to the relevant team(s).

3.2 Disrepair claim: Is a legal claim arising from the condition of residential property and may include any related personal injury claim caused by the disrepair. These claims can be brought by a West Kent tenant, shared owner/leaseholder or a member of their family.

3.3 For any potential liability to arise a resident must establish the following:

- The repair falls within the statutory, expressed and/or implied repairing obligations
- West Kent has failed to remedy the repair within a reasonable period of time
- West Kent was on notice of the repair

3.4 Notice of repair: Notice to repair will generally arise from the tenant notifying the landlord of the disrepair.

In certain circumstances a landlord can be considered on notice of disrepair where s/he has not been notified of the defect by the tenant. Examples include:

- Further to a visit to a property by an employee/contractor
- Notice from a third party e.g. Neighbour or Local Authority

3.5 If a defect occurs within the common parts of a building, notice of the defect is not required from the tenants prior to the landlord becoming liable for repairing the defect.

3.6 Pre-Action Protocol: This is intended to encourage the exchange of information between parties at an early stage of a disrepair claim and to provide a clear framework within which the parties can attempt to achieve an early and appropriate resolution of the issues. The court requires parties to engage in the Pre –Action Protocol before issuing proceedings.

3.7 Alternative dispute resolution: Mediation or similar methods which aim to settle disputes without the need for court proceedings.

4 Responsibilities

4.1 Repairs responsibility and disrepair claims

Residents' repairs responsibilities and West Kents repairs obligations are covered in the Maintaining Your Home document

Generally, leaseholders including shared owners are responsible for maintaining and repairing the interior of their homes. West Kent is responsible for undertaking repairs for tenants in accordance with the terms and conditions of tenancy agreements and any relevant statutory provisions. The maintenance and repairing obligations of communal parts may be the responsibility of West Kent or another head landlord/freeholder or appointed managing agent. West Kent maintain communal areas and collects a service charge to cover communal maintenance cost where applicable.

West Kent expects residents to carry out interior repairs that are their responsibility and to report any repairs that are West Kents responsibility to us promptly. In certain situations, such as a significant health and safety risk or in the case of resident vulnerability, West Kent will consider undertaking repairs that are the responsibility of residents and recharge them for the cost where applicable.

West Kent owes a duty of care to all residents and must ensure that such persons are reasonably safe from personal injury.

The duty of care extends to common areas and facilities. For example, maintaining stair lighting, rubbish chutes and lifts, to ensure facilities are safe and available for the use of the building occupants and their family and visitors.

Residents are contractually obliged under the terms of their tenancy agreement or lease to grant access to West Kent or our partners and contractors to inspect and/or carry out repairs that West Kent is responsible for. Access must be given on 24 hours' notice (or as per the terms of the tenancy) unless in the case of emergency when immediate access must be given.

We investigate all claims of disrepair thoroughly and then take appropriate action. Where the disrepair has arisen due to a resident not fulfilling their repairing obligations, West Kent may recharge them for any remedial repair works that are carried out in default.

We will work with tenants to address issues of disrepair, with the intention of coming to a mutual agreement to resolve the issues and to prevent legal action. We will attempt to settle and if appropriate pay compensation before any claims are issued. Any previous compensation paid will be considered as part of any settlement agreement.

Where we believe that a disrepair claim is unfounded, we will seek to resolve the disrepair claim avoiding legal action where possible.

If the resident is considering legal action and initial attempts at resolution have failed, we may use alternate dispute resolution services, such as mediation.

Where legal action is unavoidable, we will defend unfounded disrepair claims robustly.

4.2 Resolving issues relating to legal disrepair

West Kent takes a preventative approach to legal disrepair. We will consider all options to resolve a claim including:

- Where we have been responsible for the disrepair, we may provide compensation
- Agreeing a settlement for disrepair pursued by the resident through West Kents complaints process
- Alternative dispute resolution to avoid court action
- Referring the claim to West Kents insurers in cases involving personal injury and/or damage to property for which we or our appointed agents or contractors are believed to be liable for
- The surveyor being responsible for managing the case, with the Disrepair Manager accountable for managing the performance of the team and monitoring KPIs
- West Kent will engage in the Pre-Action Protocol upon receipt of a 'Letter of Claim' from the resident or their solicitor, the format of which will include the following:
 - Details the defects in the property
 - A proposal of a single joint expert
 - A request for disclosure of documents relevant to the claim, i.e., tenancy documents and documents relating to the maintenance of the property
 - Request to address liability, raise any issues concerning notice of the defects and access
 - Invite West Kent to make an offer of compensation and costs

4.3 Local Authority Powers and Housing Conditions

Local authorities have the power to issue a range of enforcement notices against landlords if the conditions of properties are deemed to be in an uninhabitable state, dangerous, or presents health and safety risks to the occupants. This includes prohibition orders, hazard awareness and improvement notices under the Housing Act 2004. Failure to comply with an improvement notice requiring a landlord to remedy any hazard in a property is a criminal offence and punishable by a fine on conviction.

When we are issued enforcement notices or orders it is imperative that we work with our local authority partners to resolve any disrepair related issues to comply with the notices and avoid prosecution.

Residents may choose to use both their local authority and the Homes Fit for Human Habitation Act 2018 routes to get redress.

Summary of Key Material / Key Changes

- No changes, this is a new Policy

RELATED POLICY DOCUMENTS AND SUPPORTING DOCUMENTS

Legislation	Environmental Protection Act 1990 Landlord and Tenant Act 1985 Defective Premises Act 1972 Homes (Fitness for Human Habitation) Act 2018
Related Policies	Damp & Mould Disrepair Procedure Maintaining Your Home
Appendix	Legal Disrepair Process Map
Forms	N/A

POLICY SIGN-OFF

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A current version of this procedure is available to all employees on (West Kent Intranet).

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