



# Legal Disrepair Policy

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Responsible Officer: Head of Operations (Triathlon Homes)

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Approved by: Triathlon Homes' Policy Panel

Date Approved:

Date of Equality

Impact Assessment: not applicable

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Effective Date: to be agreed

Policy Review Date: Nov 2016

**Policy Review Statement** - This policy will be reviewed at the date mentioned above or following legislative, organisational, or changes to good practice if sooner.

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## 1. Introduction

- 1.1 Triathlon Homes LLP ('Triathlon Homes') is the owner of 1,379 homes within East Village and is landlord to the occupiers of these properties and has appointed a Managing Agent to manage the properties on its behalf. Both Triathlon Homes and the Managing Agent are members of the Housing Ombudsman Service
- 1.2 Triathlon Homes and residents' (see glossary) individual repairing responsibilities are clearly set out in our tenancy agreements and leases.
- 1.3 Triathlon Homes seeks to resolve instances of dissatisfaction with repairs wherever possible, avoiding any civil legal claim for disrepair (see glossary) arising from the condition of the property.
- 1.4 Triathlon Homes owns dwelling leases only and all building, common parts and public realm repairs and maintenance are the responsibility of the building owner, East Village Management Ltd (EVM). Triathlon Homes will uphold EVM's repairing obligations within the Triathlon Homes' leases and tenancy agreements on behalf of residents and work with EVM to ensure that repair issues are resolved as quickly as possible.
- 1.5 All of Triathlon Homes' policies are its own, but are implemented by the Managing Agent on its behalf. Triathlon Homes' policies are required to comply with the Regulatory Standards of the Homes and Communities Agency.

## 2. Policy Statement

- 2.1 Triathlon Homes aims to minimise legal disrepair in its properties by:
  - Investigating and responding to all disrepair claims (see glossary) thoroughly, quickly and effectively; and
  - Considering all reasonable options when trying to resolve or settle a matter or dispute.
- 2.2 Where we believe that a disrepair claim is unfounded and where legal action is pursued by a resident we will defend claims robustly.
- 2.4 We will seek to recharge the resident where the disrepair has arisen due to a resident not fulfilling their repairing obligations and where remedial work was required (see the separate Recharge Policy).
- 2.5 Where we have been responsible for the disrepair we may compensate the resident affected (see our Compensation and Redress Policy).
- 2.6 Where the repair is the responsibility of EVM we will liaise closely with them to ensure the repair matter is resolved or settled.

## 3. Context

### Legislative

- Pre-Action Protocol for Housing Disrepair, 2006, Civil Procedure Rules
- Landlord and Tenant Act 1985 Section 11
- Defective Premises Act 1972 Section 4

- Contracts and Torts
- Environmental Protection Act 1990
- Housing Act 2004
- Common hold and Leasehold Reform Act 2002

#### **Links to key policies**

- Reactive Repairs Policy
- Compensation and Redress Policy
- Decants Policy
- Complaints Policy
- Recharge Policy

## **4. Method Statement**

### **4.1 Preventative action**

We deliver a quality reactive repairs service, however, where our high standards are not adhered to we will investigate and attempt to resolve this.

### **4.2 Disrepair claims**

Triathlon Homes will thoroughly investigate and seek to resolve all reported disrepair matters within our properties, including arranging joint visits with EVM on internal common parts or external repairs where necessary to resolve the matter.

### **4.2 Alternative Dispute Resolution**

We will always try to settle any disrepair claim without court action and will consider using a form of Alternative Dispute Resolution (see glossary) as an alternative to court action where appropriate.

### **4.3 Complaints**

Where we have not met our repairing obligations, a resident may pursue a complaint. We will consider any complaint in line with our Complaints Policy and as part of this policy consider a negotiated settlement where appropriate.

### **4.4 Legal Notification of Disrepair**

Should the resident or their solicitor decide to pursue legal action Triathlon Homes may receive an 'Early Notification Letter' and/or a 'Letter of Claim' concerning disrepair. Should this happen we will then follow the Pre-Action Protocol for Housing Disrepair Cases (see glossary and link in 4.5 for further details). We will aim to reach a negotiated settlement using this protocol.

If the disrepair claim has gone to court, the court may ask Triathlon Homes or the resident to pay costs if either party failed to comply with the Pre-Action Protocol for Housing Disrepair Cases.

#### 4.5 Pre-Action Protocol for Housing Disrepair Cases

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.

[http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_hou#IDAAPMCC](http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_hou#IDAAPMCC)

##### 4.5.1. Appointment of Experts

The Protocol encourages the use of a single joint expert. In order to make it less likely that a second expert will be necessary, the Protocol provides for Triathlon Homes to forward their own instructions directly to a single joint expert. Both parties can ask relevant questions of the expert. If Triathlon Homes 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 Triathlon Homes and the resident each party will pay one half of the cost of the report.

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

Triathlon Homes 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.

If the dispute is solely about the level of compensation claimed it may not be necessary to appoint an expert. The resident can take photographs or videos to back up their claim for compensation.

##### 4.5.2 Pre-Action Protocol for Housing Disrepair Cases – Exceptions

The Pre-Action Protocol for Housing Disrepair Cases does not apply where there are disrepair claims which originate as counterclaims or set offs (see Glossary) in other proceedings.

#### 4.6 Access

Residents must give reasonable access to Triathlon Homes, our contractors, EVM, their contractors and any appointed agents or experts for inspection and repair in line with their tenancy agreement or lease. The relevant party must give reasonable notice of its need for access, except in an emergency. Triathlon Homes or their contractor or EVM or its contractor will give access to common parts when appropriate.

Where appropriate and after exhausting all other alternatives, we will take legal action to gain access to properties where there is a genuine concern for the health and safety of the resident or other occupants of the building; or where there is a risk of damage to the residents' property and other occupants' property within the building.

#### 4.7 Costs and Compensation

- 4.7.1 If the resident settles their claim for compensation, without litigation and the reasons for bringing the claim are justified, Triathlon Homes will consider paying the resident's reasonable costs and/or out of pocket expenses.
- 4.7.2 Where necessary, Triathlon Homes will offer compensation to settle any matters where it recognises it, or its contractors or agents were at fault (see our Compensation and Redress Policy). Any previous compensation paid in relation to the claim will be deducted from the settlement.
- 4.7.3 Should any claim and subsequent settlement arise from the Pre-Action Protocol for Housing Disrepair Cases it should be noted this may not extend to any personal injury claims which may have to be pursued separately.

#### 4.8 Insurance Claims

When a resident or non-resident claims that they have suffered a personal injury, damage to their own property or damage to their home, and believes this was caused by Triathlon Homes, its contractors or agents or EVM their contractors or appointed agents, the claim will be handled our insurers. The resident may pursue a complaint as well as an insurance claim but Triathlon Homes will not consider liability until its insurers or those of the relevant third party have considered the claim.

### 5. Monitoring the policy

This policy will be monitored by the Head of Operations who will review this policy periodically as set out above capturing best practice, customer feedback and legislative changes to inform this review.

#### 5.1 Measures of success

The success of this policy will be measured through customer feedback on this process.

### 6. Equality Needs Impact Assessment

An equality impact assessment of this policy will be undertaken by November 2016.

### 7. Glossary

**Alternate dispute resolution** - Mediation or other dispute resolution methods which seeks to settle disputes without the need for court proceedings.

**Counterclaim** - A claim that either party makes in response to an initial claim by the other party.

**Disrepair** - For the purposes of this policy disrepair is defined as:

"A fault or problem with a property for which a landlord is responsible, knows about, and does not repair within a reasonable time".

**Disrepair claim** - Is a legal civil claim arising from the condition of residential property. Further details can be found via the link in section 4.5.

**Pre-action Protocol for Housing Disrepair Cases** - Is intended to ensure that court action should be treated as a last resort, and it is hoped that the Protocol will lead to the avoidance of unnecessary litigation. The protocol encourages the exchange of information between parties at an early stage of a disrepair claim and provides a clear framework within which the parties can attempt to achieve an early and appropriate resolution of the issues. Further details can be found via the link in section 4.5.

**Resident** – a tenant or leaseholder.

**Set-off** - Where one party agrees with the other's claim or part of it, but that has another claim which counterbalances it.

## **8. Accessibility of information/Publication**

This policy is available on the Triathlon Homes website.