Appendix 4

Disrepair Policy

Introduction

1.1 The Council has statutory and contractual obligations regarding the repair and maintenance of its properties to ensure they meet the required standards. Disrepair refers to instances where the Council has breached it repair obligations.

1.2 This policy outlines the Council's approach to meeting those obligations, highlights the preventative measures it takes to mitigate against disrepair and the measures it takes to manage disrepair cases, where they do arise.

Purpose

2.1 The aim of this policy is to provide a clear framework for staff, tenants, our residents and wider stakeholders dealing with housing disrepair and injury claims arising from allegations of disrepair and defective premises claims (working in partnership with the Council's insurers).

2.2 The policy is based on complying with the Housing Disrepair Protocol (see Appendix A).

2.3 The specific aims of the policy are to:

- work to get things right at the earliest point to prevent residents feeling the need to make disrepair claims against the Council
- ensure disrepair claims are managed appropriately and on time
- ensure the Council can successfully contest disrepair claims

Scope

3.1 As a landlord, the Council is legally obliged to repair and maintain its property portfolio in line with the requirements of the repairs policy.

3.2 When a landlord fails to keep the structure, exterior and installations for water, gas, electricity, heating, and sanitation of a property to the requisite standard; and has failed upon receipt of repairs requests to adequately address the issues in the home, and the property is deemed to be uninhabitable, this is referred to as a disrepair.

3.3 The implications of serious housing disrepair include respiratory illnesses, fatal accidents from structural failures, fire-related deaths, cardiovascular problems, and psychological harm, all stemming from issues such as damp and mould, faulty heating and electrics, structural damage and fire hazards. Serious disrepair issues can lead to health conditions such as asthma, heart attacks, strokes and, in severe cases, they can be life-threatening.

3.4 This policy applies to all residential properties owned and managed by the Council, however it should be read in conjunction with individual occupancy

agreements as the Council's repair obligations can vary – for example, between tenanted and leased properties.

3.5 While a housing condition claim is broader than the defined definition of a disrepair claim, this policy had been designed to address both housing condition claims and disrepair claims.

Definitions

4.1 The Council has maintenance duties under Section 11 of the Landlord and Tenant Act 1985 and under the Homes (Fitness for Human Habitation) Act 2018. These place the council under a duty to maintain properties to a required standard allowing the tenant to exercise quiet enjoyment of their property.

Council's (landlord's) responsibilities

5.1 Under Section 11, the Council is responsible for the exterior, the structure and all major interior repairs in tenanted properties. This is a non-delegable duty, although the carrying out of the duty can be delegated to another body, person or organisation.

5.2 Section 11 requires the Council 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 not other fixtures and fittings and appliances for making use of the supply of water, gas or electricity)
- keep in repair and proper working order the installations in the dwelling house for space heating and heating water

5.3 Section 9A of the Landlord and Tenant Act 1985, as amended by the Homes (Fitness for Human Habitation) Act 2018, imposes a legal obligation on landlords in England to ensure that their properties are fit for human habitation at the start of the tenancy and throughout its duration. This means the property must be safe, healthy, and free from hazards that could affect the wellbeing of the tenant. If the Council fails to maintain this standard, a tenant can pursue a claim for breach of contract.

5.4 Under section 4 of the Defective Premises Act 1972, the Council has a duty to take such care as is reasonable in all the circumstances to see that persons owed a duty (i.e. tenants, members of their household, and or their visitors) are reasonably safe from personal injury or property damage caused by a defect that the Council is bound to repair or maintain.

5.5 The Homes (Fitness for Human Habitation) Act 2018 further clarifies the Council's repairs responsibilities by noting that a property will be unfit for habitation if there are serious defects in any of the following:

- Repair
- Stability
- Freedom from damp
- Internal arrangement
- Natural lighting
- Ventilation
- Water supply
- Drainage and sanitary conveniences; and
- Facilities for preparation and cooking of food and for the disposal of waste water

5.6 Decent Homes Standard - A Government programme aimed at improving social housing homes to bring them all up to a minimum standard.

5.7 Housing Health and Safety Rating System (HHSRS) - Places a legal duty on landlords to assess and regularly review the condition of their homes to ensure that they are safe and free from hazards.

5.8 Housing Disrepair Claim - A civil claim arising from the condition of residential homes and may include a related personal injury claim.

5.9 Pre-action Protocol - Procedural framework to be used by parties in the pre-action stages of a disrepair / poor housing conditions claim, intended to assist parties in a housing condition claim to resolve the issues early and appropriately.

5.10 Expert / Single Joint Expert - A suitably qualified expert who acts as an independent witness for the benefit of court, and who prepares a report addressing the allegations of disrepair and/or poor housing conditions. Survey - An inspection or assessment of the structure, exterior, or related installations of a home.

Tenants' Responsibilities

6.1 Tenants are responsible for minor interior repairs including, but not limited to:

- tightening of screws in door handles on a cupboard door or similar
- re-hanging a shower curtain
- replacing a light bulb in a pendant light fitting
- bleeding a radiator
- replacing bath and sink plugs and chains
- changing the time on boiler controls/timer controls
- replacing batteries in door bells
- replacing door numbers (except fire doors)
- painting and decoration of walls, ceilings and woodwork
- clearing gardens of rubbish, weeding, cutting grass and hedges

- maintaining own personal belongings, furniture, fixtures and fittings

6.2 Furthermore, tenants must:

- report any repairs needed to the landlord as soon as possible
- properly ventilate their homes
- dispose of rubbish properly
- maintain internal decorations, furniture and equipment. Damage to these may need to be paid for by the tenant

6.3 Tenants are also responsible for any damage arising because they or someone living with or visiting them, have not taken adequate care of the property.

Investigating a repair

7.1 When investigating the validity of a disrepair claim the below points will be considered:

- whether 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) and the resident has exhausted the landlord's internal complaints procedure

Risks to health

8.1 The Council is bound by the Environmental Protection Act 1990. Section 82 of this legislation enables a tenant aggrieved by a Statutory Nuisance pursuant to Section 79(1) EPA 1990 if the disrepair is injurious to health and/or a nuisance, to bring proceedings in a Magistrates' Court against the responsible landlord.

8.2 This standard means that the disrepair has to be likely to cause injury; no injury has to have occurred for a successful claim to be brought against the Council. The risk to health does not only apply to the tenant - injury to anyone that might reasonably be on the property can give rise to a disrepair claim.

Notice and time frames for repair

9.1 Repairs can be identified, and notice given, by numerous stakeholders including tenants, staff, contractors, a surveyor, local authority health and safety professional or other third parties.

9.2 Full repairs in a property defined as being in disrepair must be remedied within 56 days following receipt of notice of the defect from the tenant.

9.3 Repair of or within the common parts of the buildings, for example, lifts, stairwells and entrance halls to blocks of flats remain the landlord's responsibility.

Preventing disrepair claims

10.1 The Council invests in, and manages, its properties in line with its Asset Management Strategy and 5-Year Investment Programme to ensure all properties meet regulatory and contractual obligations outlined.

10.2 The Council operates a rolling programme of stock and block condition surveys to evaluate the state and condition of its properties. These surveys form the basis of investment in planned maintenance to reduce the likelihood of disrepair.

10.3 The Council maintains an asset investment database which contains comprehensive information regarding its stock, enabling it to determine which types of property in which areas require investment to prevent disrepair. This data is supplemented by a referral process which enables properties requiring investment to be prioritised for improvement works.

10.4 The Council operates a responsive repairs and maintenance service to mitigate against the potential for disrepair. Tenants need to promptly report any repairs needed that the Council is responsible for. The Council will record all contact with tenants where a repair is requested by the tenants or identified by surveyors.

10.5 Details of the maintenance or repair works undertaken to a specific property or scheme should be recorded to help inform the Council of the condition of its properties.

10.6 Thorough inspections should be carried out during the voids process to identify potential disrepair issues and deploy resources to remedy any defect before the property is re-let.

10.7 Council staff and contractors will report back to the relevant property and maintenance team immediately where they become aware of repair issues while visiting a property or estate.

Managing Disrepair Claims

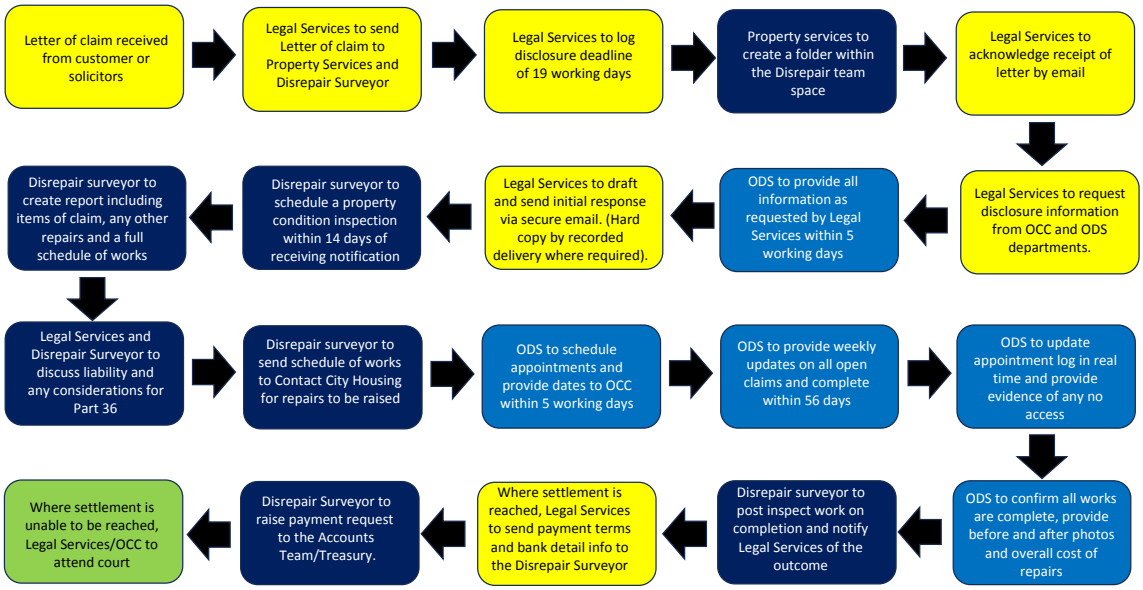
11.1 The Council adheres to the Pre-Action Protocol when responding to all reports of disrepair. Where a customer issues a disrepair claim, the Council may instruct a solicitor to act on its behalf.

11.2 Where appropriate, the Council will consider using alternative dispute resolution methods to resolve the matter with the resident at the earliest opportunity and avoid legal action. Such methods include financial settlements.

11.3 The Council will instruct a dedicated disrepair surveyor, or where required, an external expert/single joint expert in conjunction with the customer or their third-party legal advisor to inspect the property for evidence of disrepair.

11.4 The Council will undertake an agreed schedule of works to remedy disrepair within a reasonable period of time. This may sometimes mean that parts of the property will be inaccessible for a period whilst works are undertaken. Where the property is uninhabitable as a result of the works (for example if the kitchen or bathroom is inaccessible), the Council will provide temporary alternative accommodation. The property will be inspected upon completion of the remedial works.

11.5 To progress disrepair claims, the Council exchanges information with its Legal Services or other agencies requests in line with the Pre-Action Protocol and its Data Protection policy:



Appendix A

Pre Action Protocol

This Protocol was previously the Pre-Action Protocol for Housing Disrepair Cases. It has been revised to embrace claims based on the new section 9A in Landlord and Tenant Act 1985 (implied term as to fitness for human habitation) which applies only in England. Accordingly, the Protocol itself now applies only to claims made in England.

1 INTRODUCTION

1.1 This Protocol applies to residential property. It relates to claims by tenants and others in respect of poor housing conditions. Before using the Protocol, tenants should ensure that their landlord is aware of those conditions. The Protocol is intended for those cases where, despite the landlord's knowledge of the poor conditions, matters remain unresolved.

1.2 This Protocol describes the conduct that the court will normally expect prospective parties in a housing conditions claim to engage in, prior to the start of proceedings. It is intended to encourage the exchange of information between parties at an early stage and to provide a clear framework within which parties in a housing conditions claim can attempt to achieve an early and appropriate resolution of the issues.

1.3 If a claim proceeds to litigation, the court will expect all parties to have complied with the Protocol as far as possible. The court has power to order parties who have unreasonably failed to comply with the Protocol to pay costs or to be subject to other sanctions.

2 AIMS

2.1 The aims of this Protocol are to—

(a) avoid unnecessary litigation;
(b) promote the speedy and appropriate carrying out of any remedial works which are the landlord's responsibility;
(c) ensure that tenants receive any compensation to which they are entitled as speedily as possible;
(d) promote good pre-litigation practice, including the early exchange of information;
(e) give guidance about the instruction of experts; and
(f) keep the costs of resolving disputes down.

3 THE SCOPE OF THE PROTOCOL

3.1 A housing conditions claim is a civil claim arising from the condition of residential premises and may include a related personal injury claim (see 3.5 below). Although most claims are brought by a tenant against their landlord, this Protocol is not limited to such claims. It covers claims by any person with a housing conditions claim including tenants, lessees and members of the tenant's family. The use of the word "tenant" in this Protocol is intended to cover all such people.

3.2 The types of claim which this Protocol is intended to cover include those brought under sections 9A and/or 11 of the Landlord and Tenant Act 1985, section 4 of the Defective Premises Act 1972, common law nuisance and negligence, and those brought under the express or implied terms of a tenancy agreement or lease. It does not cover claims brought under section 82 of the Environmental Protection Act 1990 (which are heard in the Magistrates' Court).

3.3 This Protocol does not cover housing conditions claims which originate as counterclaims or set-offs in other proceedings i.e. where the tenant is seeking to have the compensation due for adverse housing conditions set against money claimed by the landlord (typically in a possession claim for rent arrears). In such cases, the landlord and tenant will still be expected to act reasonably in exchanging information and trying to settle the case at an early stage.

3.4 The Protocol should be followed in all cases, whatever the value of the damages claim.

3.5 Housing conditions claims may contain a personal injury element. If the personal injury claim requires expert evidence other than a General Practitioner's letter, the Personal Injury Pre-Action Protocol should be followed for that element of the housing conditions claim. If the personal injury claim is of a minor nature, and will only be evidenced by a General Practitioner's letter, it is not necessary to follow the Personal Injury Pre-Action Protocol. If the situation is urgent, it would be reasonable to pursue separate housing conditions and personal injury claims, which could then be case managed together or consolidated at a later date.

THE PROTOCOL

4 Alternative dispute resolution

4.1The parties should consider whether some form of alternative dispute resolution (ADR) procedure would be more suitable than litigation and if so, try to agree which form of ADR to use. 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 courts take the view that litigation should be a last resort, and that claims should not be issued while a settlement is still actively being explored. Parties should be aware that the court will take into account the extent of the parties' compliance with this Protocol when making orders about who should pay costs.

4.2 Options for resolving a dispute include the following—
(a) mediation: information about mediation can be found at https://www.gov.uk/guidance/a-guide-to-civil-mediation

(b) for council tenants—
*The council's own complaints and/or arbitration procedures.
*The Right to Repair Scheme. The scheme is only suitable for small, urgent repairs of less than £250 in value. Information about the scheme in England can be obtained from the Ministry for Housing, Communities and Local Government https://www.gov.uk/repair-council-property
*The Housing Ombudsman Service deals with complaints from council tenants in England about housing conditions http://www.housing-ombudsman.org.uk/

5 Tenant's Letter of Claim

5.1 It is recognised that cases about housing conditions can range from straightforward to highly complex, and that it is not always possible to obtain detailed information at an early stage. In order to avoid unnecessary delay and to ensure that notice of the claim is given to the landlord at the earliest possible opportunity, particularly where the situation is urgent, it may be appropriate for the tenant to send a letter notifying the landlord of the claim before a detailed Letter of Claim is sent.

5.2 The tenant should send to the landlord a Letter of Claim at the earliest reasonable opportunity. A specimen Letter of Claim is at Annex A. The letter may be suitably adapted as appropriate. The Letter of Claim should contain the following details:

(a) the tenant's name, the address of the property, the tenant's address if different, the tenant's telephone number and when access is available;
(b) details of the defects, including any defects outstanding, in the form of a schedule, if appropriate (See Annex C for a specimen schedule of conditions which can be used to inform the landlord of the defects);
(c) history of the defects, including any attempts to rectify them;
(d) details of any notification previously given to the landlord of the poor housing conditions or information as to why the tenant believes that the landlord has knowledge of those conditions;
(e) the effect of the defects on the tenant (including any personal injury claim by the tenant);
(f) the identities of all other persons who plan to make a personal injury claim and brief details of their personal injury claims;
(g) the details of any special damages;
(h) the proposed expert (see paragraph 7);
(i) the proposed letter of instruction to the expert; and
(j) relevant documents disclosed by the tenant.

5.3 The Letter of Claim should also request disclosure from the landlord of all documents relevant to the poor housing conditions including:

(a) a copy of the tenancy agreement including the tenancy conditions;
(b) the tenancy file;
(c) any documents relating to notice of poor housing conditions given, including copies of any notes of meetings and oral discussions;

(d) any inspection reports or documents relating to works required to the property; and
(e) any computerised records.

5.4 Documents relating to rent arrears or other tenancy issues will not normally be relevant. Nothing in the Protocol restricts the right of the tenant to look personally at their file or to request a copy of the whole file. Neither is the landlord prevented from sending to the tenant a copy of the whole file.

5.5 A copy of the Protocol should be sent to the landlord if the tenant has reason to believe that the landlord will not have access to the Protocol. If in doubt, a copy should be sent.

6 Landlord's Response

6.1 A person should be designated to act as a point of contact for the tenant (and their solicitor, if one is involved). The designated person's name and contact details should be sent to the tenant and their solicitor as soon as possible after the landlord receives the Letter of Claim from the tenant.

6.2 The landlord should normally reply to the Letter of Claim within 20 working days of receipt. Receipt is deemed to have taken place two days after the date of the letter. The landlord's response should include at least the following:

(a) copies of all relevant records or documents requested by the tenant; and
(b) a response to the tenant's proposals for instructing an expert including—
i. whether or not the proposed single joint expert is agreed;
ii. whether the letter of instruction is agreed;
iii. if the single joint expert is agreed but with separate instructions, a copy of the letter of instruction; and
iv. if the appointment of a single joint expert is not agreed, whether the landlord agrees to a joint inspection.

6.3 The landlord must also provide a response dealing with the issues set out below, as appropriate. This can be provided either within the response to the Letter of Claim or within 20 working days of receipt of the report of the single joint expert or receipt of the experts' agreed schedule following a joint inspection:

(a) whether liability is admitted and, if so, in respect of which defects;
(b) if liability is disputed in respect of some or all of the defects, the reasons for this;
(c) any point which the landlord wishes to make regarding lack of notice of the defects or any difficulty in gaining access;
(d) a full schedule of intended works, including anticipated start and completion dates and a timetable for the works;
(e) any offer of compensation; and
(f) any offer in respect of costs.

6.4 Failure to respond within 20 working days of receipt of the Letter of Claim or at all, is a breach of the Protocol (see paragraph 1.3) and the tenant is then free to issue proceedings.

6.5 The Letter of Claim and the landlord's response are not intended to have the same status as a statement of case in court proceedings. Matters may come to light subsequently which mean that the case of one or both parties may be presented differently in court proceedings. Parties should not seek to take advantage of such discrepancies, provided that there was no intention to mislead.

7 Experts

7.1 (a) Parties are reminded that the Civil Procedure Rules provide that expert evidence should be restricted to that which is necessary and that the court's permission is required to use an expert's report. The court may limit the amount of experts' fees and expenses recoverable from another party.
(b) When instructing an expert, the parties must have regard to CPR 35, CPR Practice Direction 35 and the Guidance for the Instruction of Experts in Civil Claims (2014) https://www.judiciary.uk/wp-content/uploads/2014/08/experts-guidance-cjc-aug-2014-amended-dec-8.pdf
(c) In some cases, it might not be necessary to instruct an expert to provide evidence of the housing conditions, for example, if the only issue relates to the level of any damages claimed. It may be advisable for tenants to take photographs or video footage of any defects before and after works.
(d) The expert should be instructed to report on all adverse housing conditions which the landlord ought reasonably to know about, or which the expert ought reasonably to report on. The expert should be asked to provide a schedule of works, an estimate of the costs of those works, and to list any urgent works.

Single Joint Expert

7.2 (a) If the landlord does not raise an objection to the proposed expert or letter of instruction within 20 working days of receipt of the Letter of Claim, the expert should be instructed as a single joint expert, using the tenant's proposed letter of instruction.

(b) Alternatively, if the parties cannot agree joint instructions, the landlord and tenant should send their own separate instructions to the single joint expert. If sending separate instructions, the landlord should send the tenant a copy of the landlord's letter of instruction with their response to the Letter of Claim.

Joint Inspection

7.3 (a) If it is not possible to reach agreement to instruct a single joint expert, even with separate instructions, the parties should attempt to arrange a joint inspection, meaning an inspection by different experts instructed by each party to take place at the same time. If the landlord wishes their own expert to attend a joint inspection, they should inform both the tenant's expert and the tenant's solicitor.

(b) Should a case come before the court, it will be for the court to decide whether the parties have acted reasonably in instructing separate experts and whether the costs of more than one expert should be recoverable.

Time Limits

7.4 (a) Whether a single joint expert or a joint inspection is used, the property should be inspected within 20 working days of the date that the landlord responds to the tenant's Letter of Claim.
(b) If a single joint expert is instructed, a copy of the expert's report should be sent to both the landlord and the tenant within 10 working days of the inspection. Either party can ask relevant questions of the expert who should send the answers to both parties.
(c) If there is a joint inspection, the experts should produce an agreed schedule of works detailing–
i. the defects and required works which are agreed and a timetable for the agreed works; and
ii. the areas of disagreement and the reasons for disagreement.
(d) The agreed schedule should be sent to both the landlord and the tenant within 10 working days of the joint inspection.

Urgent Cases

7.5 The Protocol does not prevent a tenant from instructing an expert at an earlier stage if this is considered necessary for reasons of urgency. Appropriate cases may include–
(a) where the tenant reasonably considers that there is a significant risk to health and safety;
(b) where the tenant is seeking an interim injunction; or
(c) where it is necessary to preserve evidence.

Access

7.6 Tenants must allow the landlord reasonable access for inspection and the carrying out of works in accordance with the tenancy agreement. The landlord should give reasonable notice of the need for access, except in the case of an emergency. The landlord must give access to common parts as appropriate, for example, for the inspection of a shared heating system. If the tenant is no longer in occupation of the premises, the landlord should take all reasonable steps to give access to the tenant for the purpose of an inspection.

Expert's fees

7.7 (a) Experts' terms of appointment should be agreed at the outset, including the basis of charging and time for delivery of the report.
(b) If a single joint expert is instructed, each party will pay one half of the cost of their inspection and report.
(c) If separate experts are instructed, each party will pay the full cost of the inspection and report by their own expert.

7.8 Information about independent experts can be obtained from—
(a) The Chartered Institute of Environmental Health, Consultants Directory http://www.ehn-online.com/consultantsdirectory/consultants.aspx?cdid=5548
(b) The Royal Institution of Chartered Surveyors' Find a Surveyor https://www.ricsfirms.com/
(c) The Expert Witness Directory https://www.sweetandmaxwell.co.uk/our-businesses/directories.aspx

Taking stock

8 Where the procedure set out in this Protocol has not resolved the dispute between the landlord and the tenant, they should undertake a review of their respective positions to see if proceedings can be avoided and, at the least, to narrow the issues between them.

Time limits

9 (a) The time scales given in the Protocol are long stops and every attempt should be made to comply with the Protocol as soon as possible. If parties are able to comply earlier than the time scales provided, they should do so.
(b) Time limits in the Protocol may be changed by agreement. However, it should always be borne in mind that the court will expect an explanation as to why the Protocol has not been followed or has been varied and breaches of the Protocol may lead to costs or other orders being made by the court.

Limitation period

10 (a) There are statutory time limits for starting proceedings ('the limitation period'). If a tenant starts a claim after the limitation period applicable to that type of claim has expired, the landlord will be entitled to use that as a defence to the claim. In cases where the limitation period is about to expire, the tenant should ask the landlord to agree not to rely on a limitation defence, so that the parties can comply with the Protocol.
(b) If proceedings have to be started before the parties have complied with the Protocol, they should apply to the court for an order to stay (i.e. suspend) the proceedings until the steps under the Protocol have been completed.

Costs

11 If the tenant's claim is settled without litigation on terms which justify bringing it, the landlord will pay the tenant's reasonable costs. The Statement of Costs Form N260 can be used to inform the landlord of the costs of the claim. https://www.gov.uk/government/publications/form-n260-statement-of-costs-summary-assessment

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