

## Introduction

The NFA fully supports the fundamental principle of the tenant's right to bring a disrepair claim against their landlord. This is an important legal option for redress for tenants where attempts have been made to get repairs done and there have been failings by the landlord to properly respond or effectively fix the disrepair.

The consequence of not effectively managing repair and disrepair claims has been tragically demonstrated through the 15 November 2022 [Rochdale Coroner's Court ruling](#) on the death of Awaab Ishak, who died in December 2020 from a severe respiratory condition caused by environmental mould in his home. The coroner found a number of failings in the landlord Rochdale Boroughwide Housing Association's response to the damp and mould. These sit alongside wider multi-agency failures. Further detail is provided later in this member briefing.

Michael Gove, Secretary of State at the Department for Levelling Up, Housing & Communities has written to all social landlords to [strongly remind them of their responsibilities](#). The Regulator of Social Housing has also [written to social landlords](#) telling them to make sure they have a comprehensive understanding of the extent of potential damp and mould issues in homes and are taking action to remedy them.

This briefing starts by looking at the issues and questions that members' should be asking to make sure that their processes and systems are robust enough to prevent disrepair cases and make sure that tenants are safe in their homes.

However, some members have recently raised concerns with the NFA about the increasing level of disrepair claims they are facing and the unethical or illegal actions of certain claims management companies now operating in this field; with vulnerable tenants being persuaded to enter into unfounded disrepair claims, which leave them financially worse off and sometimes subject to unnecessary distress and confusion.

We have heard of a growing number of unfounded claims being made on behalf of tenants who do not seem to fully understand what they have signed up to, and/or have never actually reported the problem to the landlord in the first instance. We also know that there are some claims management companies which are door-knocking on council estates or contacting people online, pretending to be from the council.

As a result of this, the NFA arranged an online forum in September 2022 for members to hear from a legal expert – Paul Lloyd of Capsticks - on good practice in managing disrepair cases, as well as providing an opportunity for members to share concerns and good practice. This briefing summarises the learning coming out of the forum, the concerns raised, and the next steps that the NFA is considering. It looks at:

- Action that needs to be taken to prevent disrepair cases
- Training and record keeping
- Decision-making when disrepair claims are received
- Compensation and accepting liability
- Challenging unfounded claims
- Court action, pre-action protocols and Alternative Dispute Resolution
- Where to raise complaints about the behaviour of complaints companies

Strong action at both the local and national level is needed to push back on unethical or illegal behaviour by claims management companies. The NFA is talking to other local authority stakeholders to explore if anything can be changed centrally to help protect tenants from such companies without reducing the tenants' rights or opportunities to bring disrepair claims.

## Preventing disrepair claims

### 1. Getting your house in order

Dealing with disrepair cuts across a number of departments in most organisations, and normally by the time there is a disrepair claim a number of things have gone wrong with the tenant journey and landlords have missed opportunities to properly fix the disrepair.

In order to effectively prevent disrepair claims in the first place it is necessary to ensure that:

- tenants know how and when to report a repair
- the repairs service is responsive and effective
- stock condition knowledge is as good as it can be
- customers can complain easily if necessary and complaints are taken seriously and resolved as quickly as possible by the organisation



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## Awaab Ishak ruling - November 2022

Two-year-old Awaab Ishak died from a severe respiratory condition in December 2020. He lived with his parents in a Rochdale Boroughwide Housing one-bedroom flat and the family had repeatedly raised concerns about the damp and mould in their home.

The coroner noted that Awaab's father has some understanding of and ability to converse in English, while his mother has very little, and commented: 'This is important when considering the ability of professionals to engage in discussions with the family and when considering the ability of the family to explain any worries or concerns they had and to understand advice.'

The coroner found Awaab's death was caused by prolonged exposure to mould in his home. The coroner's summing-up pinpoints the ways in which the landlord failed Awaab and his family. These include:

- The advice given to the family to paint over the mould in the home was not clear or effective and did not address the underlying cause of the mould.
- The property had inadequate ventilation and was not equipped for normal day-to-day living, and this led to excess damp and condensation.
- RBH inspectors put too much emphasis on 'lifestyle' rather than the lack of an adequate ventilation system when assessing what was causing the mould in the family's flat.
- RBH used several IT systems that did not share data across the organisation; this meant that not everyone who had contact with the family had access to the same information.
- RBH policy meant that once the family's disrepair claim was underway, the landlord made no attempt to deal with the mould between July and December 2020; the coroner was clear that the ongoing claim should not have stopped efforts to resolve the problem.
- The landlord did not appreciate or understand the harmful effects of the mould.



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We summarise in the table below some of the useful questions that ALMO executive teams and boards should be asking to make sure their own houses are in order.

<p><b>Reporting a repair</b></p>	<p>Do all tenants know how to report a repair? <i>Is it worth a refresh for long-standing tenants who may not remember, or tenants who do not have English as a first language, or tenants not as internet or app savvy?</i></p> <hr/> <p>Do you have different routes for tenants to report a repair, and do they function? Are your apps or website really user friendly? <i>The Regulator of Social Housing has reported some tenants saying that routes in their landlord are not accessible. Have you tested them with different groups of tenants?</i></p>
<p><b>Contractors</b></p>	<p>How good are the actual contractors or repairs staff on the ground? <i>Are complaint and disrepair issues arising from problems with contractors or the DLO? Do you need to manage a contractor or DLO better to make sure it improves its culture of customer services?</i></p> <hr/> <p>Do repairs staff communicate problems and delays effectively to tenants and follow through until the work is completed? <i>Many of the problems that tenants report to the Regulator and Housing Ombudsman relate to poor communication. Can you improve communication by making it easier for staff to update tenants on progress or problems?</i></p>
<p><b>Systems</b></p>	<p>Are case management systems able to record the end-to-end management of repairs and complaints so that issues are effectively managed?</p> <p><i>Systems should be able to record the initial reporting of a repair, the timescale and urgency it was allocated, exactly what happened when an operative turned up and when; if somebody was not in or was refused access, if a part was missing and needed ordering, whether there is a need to take any more formal action to obtain access, whether it is sufficiently important enough to do so.</i></p> <p><i>Systems should also record all communication with the tenant throughout the repair.</i></p>



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## Good asset management

Is your repairs data used to inform additional surveys or further work on particular types of property where there are trends emerging?

*Are there any areas or stock types that have specific problems, for example with damp and mould or leaks? Is there a programme in place to deal with them?*

Do you know your stock well enough?

*When was your last stock condition survey? Was it a full survey, a rolling survey or a sample?*



ALMOs which have identified certain problems in their stock have started to bring experts together in a leak detection team or a damp and mould team for example, allowing them to develop knowledge and expertise in certain property archetypes and follow through on complex cases to resolve them effectively. This may mean researching the original plans of the building to better understand plumbing routes, common ingress points etc. and communicating issues between tenants or leaseholders on different floors to help resolve problems quickly.

## Complaints Handling

Do all tenants know how to make a complaint and is it easy to do?

Who deals with repairs complaints in your organisation? Do they have the necessary competence and authority to resolve complaints effectively?

How do you ensure that complaints are quickly picked up and resolved if possible, with the tenant kept up to date on progress throughout the complaint?



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## Complaints Handling (continued)

Do tenants know how to take a complaint that has not been resolved to their satisfaction to the Housing Ombudsman?  
*Is that information clearly and easily available on your website and in letters about complaints?*

Have you taken on board the Housing Ombudsman messages on damp and mould?  
*Do you ensure that these complaints are never just dismissed as lifestyle issues and a visit to the property and a full inspection is undertaken to properly diagnose the source of the damp and mould and then find ways to resolve it?*



The NFA published a member's briefing on its [response to the Housing Ombudsman's inquiry into damp and mould](#) which has some useful good practice examples in it.

## Tenant responsibility

Do tenants understand what they are responsible for looking after and fixing, and what they need to report to you and how?  
*Do you have clear, easy-to-understand information for the tenant at the start of the tenancy? Is this available in different languages and/or formats? Is this information included in housing officer initial visits so that officers can show tenants how to order a repair, use the website or app, or contact the organisation in other ways, as well as explain what to do in an emergency?*

Do you regularly remind tenants about their rights and responsibilities?  
*Do you clearly set out what tenants may want to do themselves if they are willing and able, and what they absolutely should not attempt to do due to safety or structural reasons?*

Do all tenants understand how to report a repair and what they can expect in terms of service standards for different types of repair (e.g. routine, urgent or emergency)?  
*Do you remind tenants through newsletters or individual communication about reporting repairs, making a complaint, or what to consider if making home improvements?*



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## 2. Training

Effective tenancy management would eliminate any need for disrepair claims. Ensuring that the whole organisation works together to deliver on repairs obligations, responds to tenant requests and complaints and ensures effective communication throughout is key to preventing these cases.

Reports of disrepair or repairs required can be made to any member of staff in an organisation. All staff need to be able to recognise reports as repairs/disrepair, report them to the right place, and ensure that they are followed through. Training should cover a basic understanding of tenancy agreements, legislation, the repairs reporting systems in the organisation, the complaint protocol and disrepair claim handling.

ALMOs need to make sure that staff (across many different departments) understand the landlord's obligations and therefore the ALMOs' obligation on behalf of the council.

Responsibilities for dealing with disrepair and poor housing conditions are included in section 11 of the Housing Act 1985, although the Housing Health and Safety Rating System and the actual tenancy agreement also play their role.

The most important term is the implied term under [section 11](#) of the Landlord and Tenant Act 1985, that landlords of most tenancies must keep the structure and exterior of the dwelling-house in repair. They must also keep the installations in the dwelling-house for the supply of water, gas, electricity, sanitation, space heating and heating water in good repair and proper working order.

Tenancy agreements cannot reduce that statutory obligation, but they can enhance it. So, ALMOs need to make sure that all relevant staff have a general understanding of what the law is, as well as what additional obligations the landlord may have granted to tenants, and the duties of the tenant.



The Citizens Advice Bureau provide [useful information for tenants on repairs rights and responsibilities](#) if you want to refer them to an independent resource.



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### **3. Accurate record keeping and good processes**

Good management of repairs and disrepair requires accurate record keeping and well-organised processes.

If your case reaches court a judge will ask you to evidence how or when something happened. It is far better to be able to present the documentary evidence (e.g. the email, file, note, record of visit) than unsubstantiated narrative.

In order to do this, the evidence trail needs to be in place from the beginning of every repair report (which could potentially become a disrepair case). This means that the system and processes need to work effectively so that staff record all their activity.

For staff who pick up the first report of a problem with a property, this means making sure they know who to signpost it to, how to record the report, thinking about documentary evidence they need to pass on.

Once the initial report has been documented and repairs staff are acting on it, they need to understand how important it is to have a full record of their activity. This includes making sure that one person or team has responsibility for checking that a repair has been completed, chasing up issues, resolving problems, and communicating with the tenant.

Weak points in the process should be identified and mitigated, including for example, handover between contractor staff and ALMO staff, lack of clarity over responsibilities or duplication, poor data or recording systems.

Senior managers and boards should have assurance that their computer systems or case management systems are fit-for-purpose. This includes regular audits and learning from where things have gone wrong.





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## Managing disrepair claims

### 1. Decision making on claims

If a disrepair claim is made it is important to deal with it effectively so that claims with good reason are settled quickly, and unfounded claims are discovered quickly and challenged robustly.

Never have a policy decision to defend all disrepair claims – the policy should be to always thoroughly investigate and make case-by-case decisions. Qualified experts should be consulted quickly to make an assessment and suggest remedies. They need to be able to produce reports to back up your case if the decision is to defend the claim.

If, after thoroughly reviewing the case and checking on the evidence you think that there is a liability, you should try to settle it as quickly as possible. If organisations accept that there will be a liability if any particular case goes to court, then you will have to pay compensation.

“Be robust in your response, but only after you’ve done an assessment on whether or not there’s any liability on the claim... there is no point in defending the indefensible, because you are likely to lose in court and it will be costly. You will also get a reputation with the claims farming sector which could lead to many more claims being made” – Paul Lloyd, Capsticks

### Practical tips

- Look at the claim, to see if you’ve received the proper authority from the tenant, who is apparently being represented, check signatures to see if the signatures match. ALMOs have reported recently that there have been numerous tenants stating that the claims companies are ‘from the council’ or ‘working on behalf of someone else’ and some tenants have been misled about who they are speaking to.
- If you don't get a signature that matches, then you should ask for a wet signature to confirm.
- You should question and query; ask for the relevant experience of the experts that they want you to agree to and have your own list of experts who you trust to suggest.



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- Go out and visit the property and tenant immediately to do a survey, get in experts and try to get the work done as quickly as possible. Even though the other side sometimes might try to stop you doing that you are entitled to go into the property, inspect the property, and do the work that's necessary.
- Collate the relevant documentation from the relevant parts of the business to decide whether you are going to instruct.
- Some social housing organisations proactively send a letter when claims harvesters have been knocking on doors, in the early stages of the protocol. The letter says that the housing provider understands that the tenant has instructed this claims organisation and asks for the tenant to confirm that; and if they have not knowingly instructed the claims management company, reminds them they should speak to the landlord about any issues that they have in the property. This action is helpful as it does not try to circumvent any solicitors involved and works within the landlord and tenant relationship, but can help clarify the intention of some tenants.

If you are confident that you have the basics right then promoting the outcomes of any successful cases at court and any bad cases of claims management companies exploiting vulnerable tenants can also help raise awareness of the issues. This can potentially save tenants time, money and anxiety if they are being encouraged to take an unsubstantiated case out. It should also deter unscrupulous claims management companies.

Clear messaging from the ALMO about how to check if someone is from the council or the ALMO is worth considering, especially if you know certain companies are door-knocking.

## 2. Paying compensation on claims

How much you pay is less straightforward. You may have a standard policy on this, but it is also worth reflecting on what the tenant could receive if they went to court if you have any recent local examples, or what the Housing Ombudsman would be likely to award. It is hard to work out because the level of costs in disrepair litigation claims that 'No Win No Fee' solicitors charge on top of very small amounts of compensation is quite inconsistent. However, the quicker you try to pay what is reasonable with evidence on why it is reasonable, the less you should pay out overall.

### 3. Disrepair claims and the Housing Ombudsman

The Housing Ombudsman has published [guidance for landlords](#) on disrepair claims and the complaints process. The Housing Ombudsman states that when a landlord receives correspondence initiating the Pre-Action Protocol for Housing Condition Claims, it is important that they do not disengage from any open complaint or the repair issue itself. Commencing the protocol does not constitute legal proceedings and a complaint can be considered at any stage of the protocol. The Housing Ombudsman makes two specific recommendations:

- Landlords should promote the benefits of their complaints process and the Ombudsman to their residents as an appropriate and effective route to resolving disputes.
- Landlords should continue to use the complaints procedure when the pre-action protocol has commenced and until legal proceedings have been issued to maximise the opportunities to resolve disputes outside of court. Landlords should ensure their approach is consistent with the Housing Ombudsman jurisdiction guidance and their legal and complaint teams work together effectively where an issue is being pursued through the complaints process and protocol.

### 4. Unfounded claims

Efficient claims reviewing also tells you quickly where there is not a valid claim, and the advice is to be robust in defending those unfounded claims as that helps send the right message back to the claims management companies and tenants more generally that you are well organised and have good evidence to use to defend cases. Some organisations who have paid out simply to try and get rid of cases have reported that they were then hit with an even higher volume of cases as they are seen as a 'soft touch'.



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## Taking action against unfounded cases

The NFA is aware that members are seeing concerning behaviour from some claims companies, ranging from the illegal use of the council's intellectual property, misrepresentation, targeting of vulnerable tenants, and at times significant amounts of intimidation. Some are also using a paid referral scheme to encourage tenants to invite their neighbours to claim.

### Court Action

In the Disrepair Forum, Capsticks' advice was to be clear that you will take cases to court where (after proper investigation) you do not think there is a liability, because that's the only way that you will ultimately put off people or firms who are bringing these erroneous claims. Many of the disreputable solicitors' firms will not want to go to court, but they will push the boundaries, because they are entering into these claims on a 'no win no fee' basis.

Capsticks have had some success with unethical claims companies arguing that if a claim has not first been through the landlord's recognised complaints process, it cannot be pursued through court or by solicitors' letters. They set out the position and say that as the tenant has not gone through the complaints process, there is no liability and so ask them to confirm that the company they will now be withdrawing. It is then crucial that the landlord then contacts the tenant and resolves the repair issue as they have now been made aware of it.

### Pre-Action Protocols

Before the tenant takes court action, they are advised to follow a procedure called the Pre-Action Protocol for Housing Disrepair Cases - the '[Disrepair Protocol](#)'. It aims to encourage tenants and landlords to resolve the problem without having to go to court and is therefore an important procedure step to publicise and use.

The Disrepair Protocol suggests that tenants and landlords should consider some form of alternative dispute resolution (ADR) before going to court, such as mediation.

## Alternative Dispute Resolution (ADR)

Arbitration is the consensual, private, and binding resolution of disputes outside the court system. It differs from litigation, since the parties are neither unwilling participants nor at the mercy of the court process. It differs from mediation, which is also a consensual and confidential process that facilitates (but may or may not result in) the resolution of a dispute.

A number of councils have been considering using this approach recently and it was reported last year that the [London Borough of Lambeth was setting up a pilot from April 2022](#) using independent barristers to make decisions on cases and award compensation. The intention was for a full annual review to inform whether any changes need to be made. The London Borough of Southwark also reportedly has an ADR process set up which uses an arbitration panel that includes residents, as well as a qualified housing law expert. Within the ALMO sector Barnet Homes has been offering this approach recently with a couple of cases to test the water and would like to develop it into a viable alternative for tenants to the 'no win, no fee' claims management companies.

ADR in general offers the tenant with an alternative way to agree compensation and any works that still need to be undertaken and agree a timescale. The case is referred to an independent panel who will make a judgement on the issues and award compensation if appropriate.

This can offer a better outcome for tenants. Although it may look like they get offered a lower amount of compensation, because there are no solicitors fees, this compensation can work out a lot more than some tenants end up with after solicitors' fees are taken off the settlement.

If the ADR is established, then the landlord needs to work out how to keep the ADR as a separate but complimentary avenue to their complaints process.

There is also the Housing Ombudsman route for tenants to take if they would prefer that.



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## Complaints against Complaints Handling Companies

If you are concerned about the behaviour of claims management companies in specific cases you can encourage the tenant to complain. There are a number of routes available to them depending on the issue being complained about.

Every law practice has a compliance officer so if there is anything unethical or illegal that is happening the ALMO could also refer that issue to the compliance officer for the legal practice.

Some members reported that they have reported cases where they have thought something's not quite right to the Solicitors Regulation Authority (SRA). It will help if everyone reports concerns to the SRA so that a picture builds up of certain companies and individual evidence can support ongoing investigations.

### **Solicitors Regulation Authority (SRA):**

- [The SRA](#) regulates solicitors, firms, other types of lawyers and non-lawyers to make sure they comply with the [SRA principles](#).
- The tenant and the ALMO can raise issues with the SRA.
- They welcome information about dishonesty or breaches of their Principles, but are not able to deal with issues of poor service.
- The SRA could help if you think a solicitor might be dishonest or you have concerns about their behaviour.

### **Legal Ombudsman:**

- The tenant can raise the issue with the [Legal Ombudsman](#).
- Can only look into complaints about regulated legal service providers.
- They are only able to investigate a complaint after the service provider has had an opportunity to deal with the complaint.
- A service provider is entitled to eight weeks to address the complaint and try to resolve the matter before the Ombudsman gets involved.
- You must bring your complaint to them within six months of the date of the service provider's final response.
- They share general information such as trends in complaints, as well as specific information about individual cases where there may be potential issues of misconduct.



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## Financial Conduct

### Authority (FCA):

- ALMOs and tenants can report regulated claims management companies to the [FCA](#).
- They can also report unregistered CMCs by contacting their [Consumer Helpline](#).
- Became the regulator of claims management companies (CMCs) on 1 April 2019.
- Focus of the regulation is on driving up standards of conduct and boosting consumer protection.
- All CMCs that are regulated by the FCA must follow their rules.
  - This includes providing customers with a 1-page summary of the key information before they sign a contract; supplying a detailed breakdown of how they will charge people; offering a 14-day cooling off period; updating customers on key developments within their claims; providing information about ombudsman schemes; and clearly explaining how to complain if the customer is unhappy with the service they provide.
- CMCs must not send people emails or texts or make marketing calls (unless they have agreed to receive them); approach you in person; use any form of high-pressure selling.

## Next Steps

- The NFA will discuss these issues with sector partners, including Councils with ALMOs Group (CWAG), Association of Retained Council Housing (ARCH), the Local Government Association (LGA), National Housing Federation (NHF) and PlaceShapers to see what can be done nationally to drive out exploitative practices.
- We will talk to the SRA about the exact evidence they require for them to consider action against inappropriate behaviour from Claims Management Companies.
- The NFA will talk to the Housing Ombudsman about its approach to disrepair.
- We will lobby for greater legal aid to drive out exploitative 'no win, no fee' practices.