

FAREHAM

BOROUGH COUNCIL

Report to Housing Scrutiny Panel

Date **24 October 2024**

Report of: **Director of Housing**

Subject: **Housing Disrepair Claims: An Update**

SUMMARY

The Council have seen a rise in Disrepair Claims made against them in their role as a social housing landlord. This report provides an overview of what Disrepair Claims are, the number and status of claims received by the Council, and how the impact of Disrepair is being mitigated going forward.

RECOMMENDATION

It is recommended that the Housing Scrutiny Panel notes the content of the report, raising any questions or queries to Officers.

INTRODUCTION

1. Disrepair Claims began to be brought against social landlords from approximately 2019. There has been increased prevalence in recent years, impacting resources within the teams of housing providers and their legal services. Across the country significant sums of money have been provided as settlement/damages, in addition to legal fees being payable and incurred.
2. Fareham Borough Council has received a peak in new Disrepair Claims during 2024; levels significantly higher than in previous years. Although this can help to highlight opportunities for service improvement, it also has a detrimental impact on the Housing Revenue Account (and in turn the wider landlord services provided to tenants).

DISREPAIR CLAIMS EXPLAINED

3. In summary, a Disrepair Claim is legal action taken against landlords for failing to maintain their property which has fallen into disrepair, leading to poor living conditions for the occupants.
4. The Legal basis for Disrepair Claims comes from Section 11 of the Landlord and Tenant Act 1985, and Sections 9A and 10 of the Homes (Fitness for Human Habitation) Act 2018. The latter requires homes to be 'fit for human habitation', outlining 29 hazards which include repair, damp, ventilation, etc. Examples of disrepair issues could include damp/mould, cracks in ceilings, extractor fans not working, damaged worksurfaces, and many more.
5. The liability period (i.e. when compensation might apply) commences from the moment the Council has been given 'notice' of the defect/issue. Most commonly this would be when the issue is reported by the customer/tenant.
6. Following 'notice' the expectation is that the Council will make repairs within a 'reasonable' period. It is when things have not been remedied in a 'reasonable' period that the Disrepair Claim risk applies. To counter any claim, it would be for the Council to demonstrate that 'notice' had not been given and/or evidence that the Council has taken reasonable steps to make a repair in a timely manner. There is no definition of 'reasonable' period, acknowledging that every repair requirement and set of circumstances can differ.

A NATIONAL ISSUE

7. For several years, Disrepair Claims have been acknowledged within the social housing sector as a major concern, impacting Local Authority providers of affordable homes and other Registered Providers.
8. Inside Housing (a specialist housing publication) have reported regularly on the matter. This includes recent examples such as Haringey Council, who reportedly have over 1,000 active Disrepair Claims, and who have had to approve nearly £7M to tackle the issue.
9. The wider industry acknowledges that a rise in the focus on disrepair by no-win no-fee (or claim farm) firms was in part due to the 2018 Act, but also as the Payment Protection Insurance (PPI) work dwindled nationally in 2018 and 2019.

DISREPAIR CLAIMS AGAINST THE COUNCIL

10. Up until recently Fareham Borough Council experienced a limited and small number of Disrepair Claims. This allowed it to be managed within existing resources, and having a small impact on the Housing Revenue Account. In spring 2024 there was a dramatic increase in Disrepair Claims lodged against the Council.

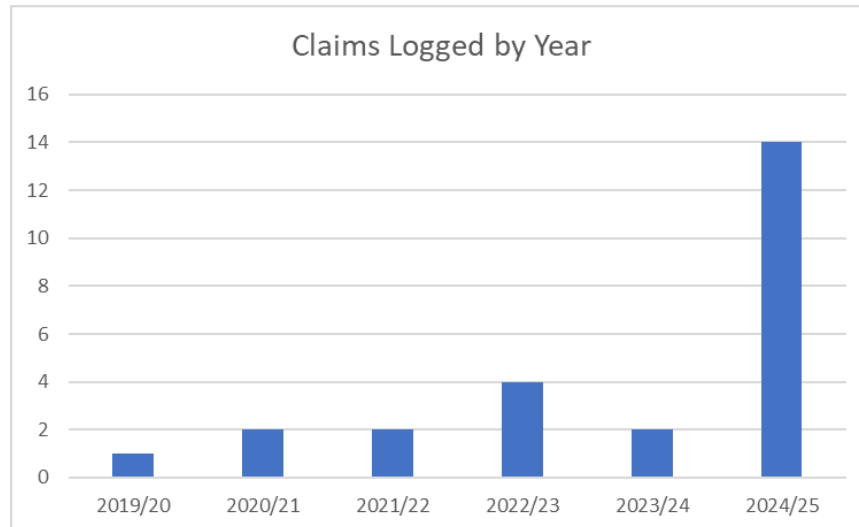


Figure 1

11. Figure 1 above shows the claims lodged by year. It should be noted that the 14 cases for 2024/25 only represent the position at early September 2024, not even halfway through the financial year.

12. The status across all claims against the Council is as follows (at early September 2024): -

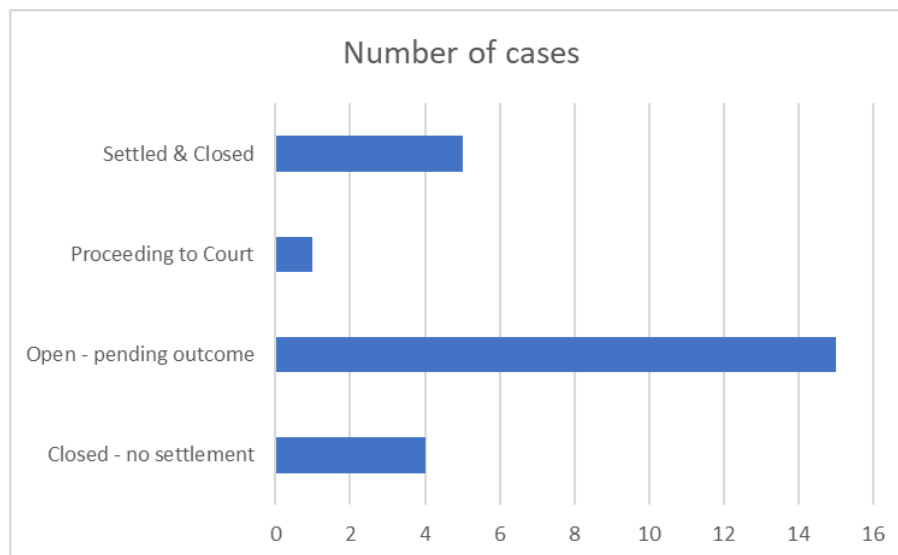


Figure 2

13. Claims are hard to defend. The onus is on the Council to prove that 'notice' of the repair issue has not been given (rather than on the Claimant proving they have given 'notice'). In addition, 'reasonable' period has no definition, and case law has indicated that limited to no leniency was given to impacts such as the COVID-19 pandemic and the backlog of repairs after that period, or for difficulties in gaining access to a home. A further component is that most claims involve damp/mould, and recent advice via the

government and the Housing Ombudsman is that 'lifestyle' shall not be blamed as a cause or contributory factor to mould/damp issues in homes.

Settled Cases

14. Since 2019/20 the Council have settled on five claims (noting one was brought as an Environmental Protection Act case). The total of damages paid was £10,569 (an average of £2,115 per case), with a further £37,464 total (average of £7,493) paid as legal fees to the Claimant's solicitors.
15. Legal advice is integral to the Council's process from the moment a claim is received. The stance of Officers has been to defend and push back against claims whenever possible, but to also acknowledge if/when things (such as repair timeliness) have not been done as we would wish, and seek to settle in such circumstances, whilst ensuring any outstanding repair matters are addressed swiftly.

Case proceeding to Court

16. One current open case is due to proceed to court as the Council have refused to enter into a settlement due to the particulars of the case.

Current peak in Claims

17. The current peak in Disrepair Claims has no definitive explanation, but Officers believe that the Fareham area was specifically focused with door knocking by representatives from no-win no-fee firms. In addition to this we are aware that social media adverts exist, and there is a general drive from several firms to pursue Disrepair Claims on behalf of tenants.
18. Multiple solicitors have represented clients/tenants for the 25 cases the Council has received since 2019. Of the 14 cases so far received in 2024/25, 10 have been from a single firm, Gowing Law Solicitors.



Figure 3

Strength of remaining open cases

19. Analysis of the current open cases with the Council would suggest that many have limited strength, and the Council should be able to avoid the need to agree or seek a settlement with Claimants on many of these cases. There are however some cases where Officers are of the opinion that the Council will have a weaker case and may

therefore need to settle. These cases tend to involve more significant repair works, often involving investigation to understand the cause, or where repairs works have been put out to a contractor and not then taken place in a reasonable period.

MITIGATING THE IMPACT AHEAD

20. There are limited measures available to mitigate the risk of Disrepair Claims, and any imperfection in the repairs service could leave the Council vulnerable. The below articulates those measures already introduced, in-hand, or anticipated to be introduced.

- a) *Prioritising repair works associated with Disrepair Claims:*
When claims are received, the sooner repairs are undertaken then this limits the claim period whereby compensation might apply. [Already in place]
- b) *Good record keeping:*
This is vitally important to evidence when repairs are reported, and to provide information of if/when repairs haven't been undertaken and why. This helps with the strength of the Council's case and ability to push back against Claims. Demonstrating good record keeping provides more confidence that a repair issue has or hasn't been reported. It also allows us to learn when things have not been appropriately addressed. [Already in place]
- c) *Ensuring timely and efficient repair service:*
Endeavouring to continually improve the repairs service (see points (e), (f), and (g)). [Ongoing]
- d) *Tenant relationship/tenant communication:*
As part of an autumn tenant newsletter Officers intend to include a page about Disrepair Claims, covering the risk the process can pose to customers, the impact to our role as landlord, how certain firms profit from it, and other routes for complaint* and compensation available for tenants. This is in part responding to concerns raised by some tenants that some firms have targeted vulnerable tenants. [Autumn 2024]
- e) *Revised approach to repair contract work:*
The current Repair Framework Contracts involve multiple contractors. This makes it difficult to adequately ensure timeliness and completion of repairs. This will be replaced in November 2024 with a new contract approach which will be focused on KPIs, with one main contractor for most externally undertaken repair work. It will then be easier to manage contract performance. [Mobilising in November 2024]
- f) *Revised Housing Management System for repairs works:*
The logging of repairs and monitoring all outstanding work has moved over to the new Housing Management System. Although this switch took place in May 2024 some further 'patches' to the system are required to ensure it is fully effective. [patch being applied in Autumn 2024]
- g) *Potential addition resource:*
Potential additional Officer resource will be considered to ensure the effective management and contract oversight to accompany point (e) and allow improved monitoring of repair targets and outstanding works through utilisation of point (f). [To be considered by Director of Housing as a spend to save opportunity]

h) *Lobbying:*

Officers have actively engaged in information requests from the Local Government Association on the issues and prevalence of Disrepair Claims. Fareham Borough Council also became a signatory to a paper led by Southwark Borough Council on wider pressures to Council's Housing Revenue Accounts, and it is anticipated that there may be further opportunities to collectively raise concerns.

21. It is of note, that in all Disrepair Claims logged with the Council, none of the Claimants had utilised the Council's complaints process to express or seek to have their repair concerns dealt with, nor progressed matters of lack of repair to the Housing Ombudsman.
22. There are indications that the flurry of claims in spring/early summer 2024 is subsiding. No new Disrepair Claims were logged against the Council in July or August 2024.

RISK ASSESSMENT

23. Although this report and its recommendations present no direct risk, it does highlight a present and growing issue for the Housing Revenue Account.

CONCLUSION

24. There has been a rise in Disrepair Claims received by the Council over the period April-July 2024. This is mainly attributed to one legal firm. Indications at this stage suggest that the rate of new claims has decreased.
25. Mitigation is already underway, and further measures are in-hand or planned, to reduce the ongoing risk of Disrepair Claims to the Council.
26. Officers will continue to look for opportunities for wider lobbying at a national level to see if the impact of Disrepair to social housing providers could be lessened. This within the context of other routes of complaint and redress being available to tenants who are not satisfied with the timeliness of repair (such as the Council's Complaints process and/or the Housing Ombudsman), and with increased regulation of social landlords now in place.

Appendices: None

Background Papers: None

Reference Papers: None

Enquiries:

For further information on this report please contact Robyn Lyons (01329) 824305.