

## BELGRAVE NEIGHBOURHOOD CO-OPERATIVE HOUSING ASSOCIATION PRE ACTION PROTOCOL POLICY

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### *Aims of the policy*

The following are aims of the pre action protocol policy:

- To ensure that co-op tenant members have adequate methods to seek redress where repairs problems arise
- To enable appropriate alternative dispute resolution as an alternative to court action in a housing conditions claim
- To ensure where possible that disputes regarding repairs can be resolved without the need for the significant legal costs of solicitors for the co-op and for the tenant member
- To set out in what circumstances the co-op would issue a Notice to Quit in respect of a tenant member issuing a housing conditions claim where appropriate dispute resolution had not been entered into.

### Delegated Authority

- 1 The co-op delegates it's Senior Housing Lead to operate its pre action protocol for housing conditions claims policy and, following discussion with the Chief Executive Officer, authorises them to:
  - manage the co-op's complaints procedure as set out in the complaints policy
  - engage and liaise with the Housing Ombudsman Service as appropriate and necessary
  - arrange additional alternative dispute resolution where a complaint review warrants it
  - issue Notices to Quit in respect of a tenant member taking action that contravenes the membership agreement in respect of acting outside the pre action protocol for housing conditions claims where appropriate and take appropriate ongoing legal action.

## Redress options in respect of repairs problems

- 2 Where a tenant member wishes to raise a repair problem, in the first instance, they should report the matter to the co-op's office for resolution.
- 3 If, having reported a repair problem through the correct channels, the repair problem is not resolved in accordance with the repairs policy, including within the timescales for the type of repair reported, the tenant member may make a formal or informal complaint regarding the matter to the co-op in accordance with the complaints procedure.
- 4 If the matter is not resolved to the satisfaction of the tenant member through the complaints procedure, they may seek further review of the issue through the Housing Ombudsman Service as detailed in the complaints procedure.

## Pre action protocol for housing conditions claims

- 5 There will always be some matters of disrepair that will be more complex and difficult to resolve than others. Tenant members may consider resorting to legal claims to get these issues resolved, and legal firms on occasions seek out such disrepair claims.
- 6 The Pre-Action Protocol for Housing Conditions Claims (the protocol) sets out what courts 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.
- 7 If a housing conditions 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.

- 8 Legal action can be stressful, costly and time-consuming for tenant members. For the co-op, it can divert much needed funds away from our repairs programmes for our tenant members. The co-op is therefore committed to maintaining a positive relationship with our members to minimise the risk of housing conditions claims becoming protracted and contentious.
- 9 The co-op will ensure that we are prepared to identify cases at risk of becoming legal issues at an early stage and our strategies to progress any such cases shall have continuing emphasis on ensuring that the tenant member is kept informed, feels that we are taking the issue seriously, and is assured that the matter is progressing.
- 10 Where a tenant member is inclined towards following the protocol and making a claim, in accordance with what the courts require, they should first participate in an alternative dispute resolution (ADR) approach, which could be through the co-op's complaints procedure and/or subsequently through the Housing Ombudsman Service's investigation process.
- 11 Making use of ADR will usually mean:
  - more timely resolution of the issues
  - a more simple and flexible approach to redress
  - no legal costs incurred by the tenant member
  - reduced costs for the co-op allowing greater expenditure on repairs work
  - the investigation and resolution will not be limited in scope in the way that a disrepair claim would be
  - the potential to benefit other tenant members in similar circumstances through resolution and proactive learning
  - there could be impartial and independent assessments of the co-op's actions by someone appointed to hear a review in our complaints procedure and then potentially by the Ombudsman.
- 12 Where the co-op receives correspondence from or on behalf of a tenant member initiating the protocol, we shall treat the matter as a formal complaint and handle it in accordance with our complaints procedure.
- 13 We shall also takes steps to deal with the repair issue identified. Where a tenant member has been advised by a solicitor to deny access to

complete the repairs, we will consider alternative methods of gaining access, such as seeking an injunction.

- 14 In the interests of effectively managing legal claims and promoting ADR, we will:
- be clear with the tenant member on how we are handling correspondence – whether under our complaints procedure or the protocol or both
  - be clear with the tenant member when a complaint has exhausted our complaints procedure, and which correspondence constitutes the final complaint response
  - direct tenant members who have completed the complaints procedure to the Ombudsman, for a free, independent and impartial assessment of the case.

#### Fully mutual contractual housing co-op tenancies

- 15 As a fully mutual housing co-operative, the co-op issues contractual tenancies that give the co-op an unfettered right to issue Notices to Quit and take pursuant action in accordance with the co-op's policies.
- 16 The co-op has agreed a membership agreement with its tenant members where co-op members agree not to pursue a Housing Conditions Claim or commission solicitors to act on their behalf in repairs or other cases until BNCHA's complaints procedure, and any subsequent consideration by the Housing Ombudsman Service, has been exhausted.
- 17 The co-op will respond to the initiation of the protocol in accordance with the required responses. The co-op will only consider the matter to be *legal* when proceedings have been issued. The issuing of proceedings involves filing details of the claim, such as the Claim Form and Particulars of Claim, at court. The court will then serve this on the co-op for us to answer to.
- 18 The co-op shall consider the issuing of proceedings without proceeding through ADR as set out above to be a breach of the membership agreement and this will usually lead to the co-op terminating the tenant

member's membership which will subsequently result in the termination of the member's tenancy.

- 19 Upon breach of the membership agreement, the co-op shall write to the tenant member to advise them that they have breached the membership agreement and that this will lead to the loss of their tenancy. The co-op will issue a Notice to Quit in respect of the breach of the membership agreement. The co-op shall withdraw the Notice to Quit during the notice period if the tenant member supplies written evidence that the proceedings have been withdrawn. Otherwise the co-op shall proceed to terminate the tenancy in accordance with its procedures for doing so.