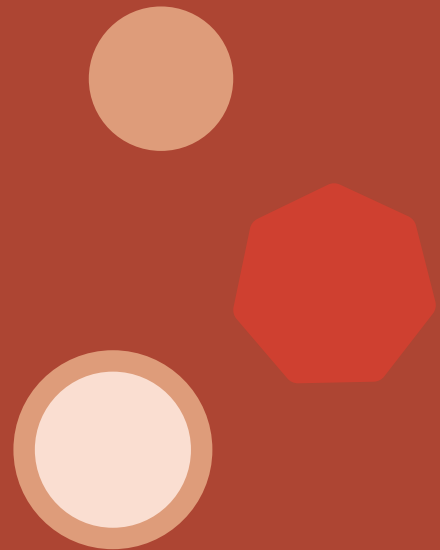


# Disrepair Arbitration Scheme Terms of Reference

October 2022



Disrepair  
Arbitration  
Scheme

Sponsored by



**Lambeth**



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SECTION

**A**

# **Preliminary**

## 1. Purpose and Scope of Terms of Reference

- 1.1 These Terms of Reference including the Annexes set out who is eligible to lodge a dispute at the Scheme, the types of disputes that the Arbitrator can consider, how the Arbitrator resolves disputes, services that the Scheme provides and other related matters. For the avoidance of doubt, the interpretation accorded to these Terms of Reference by the Arbitrators shall be final and conclusive.
- 1.2 These Terms of Reference are binding upon the following classes of persons and entities as defined in paragraph 2 below:
- the Lambeth Council (“the Council”);
  - Eligible Applicants (“Applicant”) whose claims have been accepted by the Scheme; and
  - Arbitrators.

## 2. Definitions

- 2.1 The following words have the following meanings where they appear in these Terms of Reference –

<b>‘Applicant’</b>	means a resident with a council tenancy/lease or their approved representative who has made an Application to the Scheme;
<b>‘Application’</b>	means an application to the Scheme for assessment under the eligibility criteria;
<b>‘Arbitrate/Arbitration’</b>	means the process of arbitration of an Eligible Application under the Scheme;
<b>‘Award/Arbitral Award’</b>	means an award rendered by the Arbitrator which is final and binding on the Council and the Applicant;
<b>‘Arbitrator’</b>	means a person who is suitably qualified and experienced in arbitration and is appointed by the Council to act as an independent arbitrator;
<b>‘Building’</b>	means the building in which the Dwelling is situated;
<b>‘Case Officer’</b>	means any person employed by the Council who acts as a case manager responsible for addressing enquiries, gathering information and vetting Applications to decide whether an Application should be accepted under the Scheme in accordance with these Terms of Reference and the intake criteria;

<b>'Claim'</b>	means a claim against the Council by its Tenant(s) or Leaseholders, which the Council may accept for resolution pursuant to the Scheme VII;
<b>'Claimant'</b>	means a Party to an Arbitration, who may be a tenant or leaseholder who, who has made an approved Application to the Scheme.
<b>'Council'</b>	means the London Borough of Lambeth, Lambeth Town Hall, Brixton Hill, London SW2 1RW
<b>'Council Claim'</b>	means a claim by the Council against the Tenant/ Lessee
<b>'Counterclaim'</b>	means a counterclaim made by the Council against a Tenant/Lessee which has been or was accepted for dispute resolution pursuant to the Scheme to which the Arbitrator may consent (in the form set out at Annex VI) which may or may not arise from the Landlord and Tenant relationship between the Parties;
<b>'Court'</b>	refers to the civil or criminal courts of the United Kingdom;
<b>'Customer'</b>	means an introductory, secure or demoted tenant within the meaning of the Housing Acts or a residential Lessee of the Council;
<b>'Dwelling'</b>	means the property demised to the Tenant by the Council the subject of the Claim;
<b>'Effective Date'</b>	The date the application is live.
<b>'Eligible Claim/Claimant'</b>	As set out in Paragraph 11 of these Terms of Reference;
<b>'Eligible Dispute'</b>	A difference between the Council and Claimant on a housing disrepair matter that has crystallised into a formal dispute (including the subject of Pre-Action Protocol letter) that is capable of being determined under the Scheme and associated Terms of Reference.
<b>'Extended Eligible Claim'</b>	refers to a dispute that has the meaning described in Annex IB of these Terms of Reference;
<b>'Government'</b>	means the Government of the United Kingdom
<b>'Housing Repair Claim'</b>	means a claim by a Tenant/Leaseholder against the Council in relation to a Disrepair matter

<b>'Lessee'</b>	means a Tenant holding a Long Lease where the Council is the Tenant's immediate landlord;
<b>'Letter Before Action'</b>	means a Pre-Action Protocol letter or letter from a Tenant claiming the Council is in breach of its contractual and/or statutory duty to repair the Dwelling and/or Building.
<b>'Limitation Period'</b>	means the time limit for a Customer Claim or the Council's Counterclaim to be made as set out in the Limitation Act 1980 against either party.
<b>'List of Arbitrators'</b>	means the Council's list of arbitrators for arbitration under these Terms of Reference and the Scheme Arbitration Rules;
<b>'Long Lease'</b>	means a tenancy of a dwelling-house granted in pursuance of Part V of the Housing Act 1985 (the right to buy) and/or a tenancy granted for a term certain in excess of 21 years.
<b>'Notice to Arbitrate'</b>	means an application by a Claimant to the Council to request for the initiation of Arbitration;
<b>'Ombudsman'</b>	means the Housing Ombudsman
<b>'Paragraph'</b>	means a term and/or condition set out in paragraphs in these Terms of Reference, excluding the Annexes;
<b>'Parties'</b>	mean a Tenant/Lessee and the Council;
<b>'Pre-action Protocol'</b>	means the Pre-Action Protocol for Housing Conditions Claims (England) issued by the Ministry of Justice
<b>'Pre-action Protocol Letter'</b>	means a letter issued pursuant to the Pre-action protocol.
<b>'Regulators'</b>	means the Regulator of Social Housing
<b>'Representative'</b>	means the representative of the Council at the Arbitration conducted under the Scheme, and may include any individual who dealt with the Council or supervised the dealing with the Council in the provision of the repairs and maintenance that gave rise to the Eligible Dispute / Claim, and the individual is an employee, agent or third-party contractor of the Council;
<b>'Respondent'</b>	means the Party to an Arbitration, who may be a Tenant / Leaseholder or the Council or, who, as the context requires, is in receipt of a Claim;

<b>'Rule'</b>	means a term and/or condition set out in the Scheme Arbitration Rules;
<b>'Scheme'</b>	means the Disrepair Arbitration Scheme for managing and resolving Eligible Claims administered by the Scheme Administrator;
<b>'Scheme Administrator'</b>	The person(s) responsible for administering the Scheme and assessing eligibility.
<b>'Specified Arbitration Time'</b>	means the 4 hours allocated for the substantive arbitration meeting under these Terms of Reference;
<b>'Tenant/Tenancy'</b>	Means an introductory, secure or demoted tenant within the meaning of the Housing Acts or a Lessee of the Council as appropriate;
<b>'Terms of Reference'</b>	means these Terms of Reference for the Scheme

- 2.2 References to the male gender include, where the context admits, the female gender and vice versa and references to the singular number include, where the context admits, the plural number and vice versa.
- 2.3 References to days mean working days unless otherwise stated.
- 2.4 References to month means a calendar month.

### **3. Amendment and Applicability**

- 3.1 The Scheme Administrator may amend these Terms of Reference from time to time following consultation with relevant stakeholders where appropriate.
- 3.2 The Scheme Administrator may amend the Annexes as and when required. In the event of inconsistency between the main body of these Terms of Reference and the Annexes, these Terms of Reference prevail.
- 3.3 These Terms of Reference apply to any Claim in which the Application is received on or after the Effective Date.



SECTION

**B**

# **Power and Functions of the Scheme**

## **4. Objectives of the Scheme**

- 4.1 The objective of setting up the Scheme is to provide the Council and its Tenants/ Lessees with an independent and affordable avenue, less adversarial alternative to litigation, for resolving a Claim;
- 4.2 The arbitrator shall at all times be independent and impartial and shall not act as an advocate for any Party in an Eligible Claim.
- 4.3 The Council shall have the power to –
- (a) accept and reject Applications in accordance with the Intake Criteria set out in Annex IA;
  - (b) request for information that is necessary for and relevant to the handling of Claims and/or Eligible Claims;
  - (c) provide guidance for the conduct of its Arbitrators, including but not limited to the setting out of rules, ethical codes and guidance notes from time to time;
  - (d) publish data about Eligible Claims for research, evaluation or educational purposes. The nature and format of publication may include summary of statistics by sectors or nature of cases without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties;
  - (e) take any such other actions and initiatives as deemed appropriate to put into effect the objectives of the Scheme.
- 4.4 The Council has the full and sole authority to:
- (a) maintain a List of Arbitrators;
  - (b) decide the entry and exit of Arbitrators on the above lists; and
  - (c) appoint Arbitrators to approved applications.

## **5. Principles and Functions of the Arbitrator under the Scheme**

- 5.1 The Arbitrator shall operate according to the following guiding principles:
- (a) Independence – the resolution procedures should be independent;
  - (b) Impartiality – the process should ensure that both Parties are treated in an impartial way;
  - (c) Accessibility – the Scheme should be accessible and user friendly. The dispute resolution procedures should be straight forward, clear and easy to understand;
  - (d) Efficiency – the Eligible Claims should be settled in a timely and efficient manner; and
  - (e) Transparency – in dealing with the Eligible Claims, the Scheme should be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations under the laws of the United Kingdom.

## **6. Case Review Panel**

- 6.1 A case review panel consisting of Lambeth cabinet members and ward councillors will periodically review the overall outcomes of scheme cases to ensure that the Scheme has been operated in accordance with the overall aims of the scheme.

## **7. Application of the Scheme**

- 7.1 The Council will enter into Arbitration with the aim to resolving an Eligible Claim if –
- (a) the Tenant/Leaseholder so wishes, and
  - (b) the Standard Eligible Claim was not resolved directly between the Parties prior to the Applicant making an Application.
- 7.2 The Council shall follow the procedures prescribed by the Scheme, including, but not limited to the following:
- (a) respond to the requests for relevant information from the parties within the timeframe specified by the Scheme;
  - (b) provide the Arbitrator with the requisite authority to settle any individual claim;
  - (d) participate in the Arbitration in good faith;
  - (e) fulfil the terms of Arbitral Award; and
  - (f) pay promptly to the Claimant any compensation and any other costs and charges awarded.

## **8. Costs and expenses**

- 8.1 The service of the Scheme is offered to Tenants and Leaseholders free of charge.
- 8.2 The Council shall pay the cost of any single joint expert report.
- 8.3 The Council shall pay the cost any interpreter if required.
- 8.4 The Council shall meet the cost of the Arbitrator;
- 8.5 The Council will pay Claimants' legal fees arising out of any existing legal representation in the Arbitration usually limited to £2,000 up to and including the hearing of the arbitration. Fees in excess of this would be subject to assessment by a costs drafts person.

SECTION

C

# Scope of the Scheme

## 9. Claims that can be brought before the Arbitrator

9.1 Subject to Paragraph 12 (initial requirements), the Scheme will only handle the following disputes that fulfil all of the conditions of Paragraph 9.1.1 or Paragraph 9.1.2 (collectively known as “Eligible Claims”) –

### 9.1.1 Standard Eligible Claim

- (a) the dispute must be an individual Customer Claim brought against the Council with signed consent by the Parties (in the form set out at Annex VII);
- (b) An individual Customer has filed a Pre-Action Protocol Letter to the Council and voluntarily agreed to engage in Arbitration as a means of alternative dispute resolution;
- (c) the dispute may have a monetary nature (for the avoidance of doubt, the Arbitrator shall have the sole discretion to decide what is monetary nature);
- (d) the dispute may relate to outstanding works or works that have been completed where it is alleged the work is substandard;
- (e) a complaint that has remained unresolved to the Applicant’s satisfaction under the Council’s complaints and final review processes; and
- f) the claim is unlikely to exceed the monetary limit of £30,000.

### 9.1.2 Extended Eligible Claim

- (a) the dispute must be brought in the following situations and with signed consent by the Parties (in the form set out at Annex VII):
  - (i) where an individual Customer Claim or Counterclaim, is beyond the Limitation Period, is brought by a Customer; or
  - (ii) where a Council Claim or a Council Counterclaim is brought by the Council.
  - (iii) where the Claim is likely to exceed the monetary limit of £30,000.

For the avoidance of doubt, the Arbitrator shall have the sole discretion to ascertain what constitutes an individual Customer Claim, Council Claim or Council Counterclaim.

- (b) the dispute must be of a monetary nature (For the avoidance of doubt, the Arbitrator shall have the sole discretion to decide what is ‘monetary nature’).

## **10. Definition of Eligible Claimant**

- 10.1 The following persons, known as Eligible Claimants ('ECs'), may bring a Claim –
- (a) an individual having or who has had a Customer relationship with the Council;  
and
  - (b) the whole or the part of the Claim is within the Limitation Period.

## **11. Cases outside the purview of the Scheme**

- 11.1 Situations where Case Officers shall reject an Application are set out in the Intake Criteria at Annex IA.
- 11.2 All disputes which have not first been raised by an EC with the Council so as to give the Council an opportunity to resolve it directly, if submitted to the Scheme, shall be rejected.
- 11.3 The Council shall discontinue handling a Claim if, after the Application is lodged, one of the Parties commences legal proceedings against the other Party while the Claim is being processed unless the court has ordered a stay of the proceedings for the purposes of Alternative Dispute Resolution (ADR). There is an ongoing obligation on the part of the Parties to inform the Arbitrator whether any such complaint or legal proceedings in respect of the subject matter of the Eligible Claim has been initiated.
- 11.4 The Council shall discontinue handling a Claim if, after the Application is lodged with the Council, it comes to the knowledge of the Council that the Claim has been the subject of court proceedings where there is a decided judgment.

SECTION

**D**

# **Process of the Scheme**

# Part I – Initial Process

## 12. Initial requirements

- 12.1 For a Claim, an Eligible Claimant should have already notified the Council of the disrepair issue to give the Council a reasonable period of time to resolve any disputes directly with him before going to the Scheme.
- 12.2 An Eligible Claimant should only file an Application with the Council if –
- (a) the Council has failed to resolve the issue through its repair and complaints process.
- or
- (b) the Council is in receipt of a Pre-Action Protocol Letter

## 13. Initial enquiries

- 13.1 Initial enquiries can be made by customers to the scheme in person, by phone, letter or email. The Scheme Administrator will assist with the enquiries, explain the scope of the Scheme, eligibility and provide information on available channels for taking forward their enquiries.

## 14. Filing of applications

- 14.1 Submission of Scheme Application Form
- 14.1.1 To submit an Application, an Applicant should fill in the Scheme Application Form set out in Annex II, clearly listing out the issues in dispute and the amount of monetary loss suffered, as well as attaching the relevant correspondence with the relevant Party. The Scheme Application Form may be amended by the Scheme Administrator as and when required.
  - 14.1.2 An Application to the Scheme can only be made in accordance with the Intake Criteria set out in Annex IA.
  - 14.1.3 The Applicant may give consent to the Council to use the information for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of the Applicant.

## 15. Role of the Scheme Administrator

- 15.1 Acknowledgement of receipt
- 15.1.1 Upon receipt of the Scheme Application Form, the Council shall issue an acknowledgement of receipt to the Applicant.
- 15.2 Vetting by Scheme Administrator
- 15.2.1 The Scheme Administrator assigned may require an Applicant to provide further information that is considered necessary to assess whether the Application fulfils the conditions as an Eligible Claim. The Applicant must comply with the request within the timeframe specified.



15.2.2 The Scheme Administrator shall consider, having regard to the Intake Criteria set out in Annex II and with due reference to the definitions of Eligible Claims, Eligible Claimants and the Council, whether to accept or reject the Application.

### 15.3 Procedures for accepting or rejecting an Application

15.3.1 If the Scheme Administrator decides to accept or reject an Application based on Paragraphs 12 to 14 and the Intake Criteria set out in Annex IA, s/he will advise the Applicant and the Council, and where appropriate, any other parties that are involved in and have been informed about the Application.

15.3.2 If the Applicant objects to the decision made by the Scheme Administrator, the Applicant can make written representations to the Council within 21 days from the date of receipt of the Scheme Administrator's decision.

15.3.3 A senior staff member shall review the decision of the Scheme Administrator to accept or reject any Application where necessary.

15.3.4 For the avoidance of doubt, all decisions made by the senior staff member shall be final and conclusive and shall not be challenged by the Applicant or the other party.

### 15.4 Acceptance of cases

15.4.1 A Claim shall be referred to Arbitration, where appropriate, upon acceptance by the Council and the Parties shall be notified in due course. For a Claim which is accepted by the Council as an Extended Eligible Claim, it may be referred to Arbitration provided that the Parties have given their signed consent (in the form set out at Annex VII).

15.4.2 Upon acceptance of an Application, the Arbitrator may require a Party to an Eligible Claim to do anything else that the Arbitrator considers may assist the conduct of Arbitration. This may include requiring a Party to an Eligible Claim to attend a pre-arbitration session (conducted by the independent Arbitrator), or provide further information except where the Party satisfies the Arbitrator that –

(a) to provide the information would breach a Court order;

(b) to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to the disclosure of the information has not been obtained;

(c) the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or

(d) the information is irrelevant to the Eligible Claim.

Notwithstanding the aforesaid, nothing in these Terms of Reference shall prejudice any Party's right against self-incrimination or to claim legal professional privilege.

15.4.3 A Party to an Eligible Claim must comply with such a request under Paragraph 16.4.2 within the timeframe specified by the Arbitrator.

15.4.4 Nothing in these Terms of Reference or elsewhere restricts the Arbitrator's ability to give any Party an extension of time to comply with its obligations under Paragraph 16.4.2 (even if the original period, or the period as extended, has ended) should the Arbitrator consider this appropriate.

# Part II – Claim Resolution Process

## 16. Arbitration

### 16.1 General

16.1.1 The Council is required to procure a list of independent Arbitrators for the provision of arbitration services under the Scheme and shall have the power to remove at its sole discretion any Arbitrator who fails to adhere to these Terms of Reference and/or the Scheme Arbitration Rules and/or Ethics Codes for Arbitrators set out in Annexes III and IV respectively from the List of Arbitrators.

16.1.2 The Council shall pay the costs of the Arbitrator.

### 16.2 Arbitration Rules

16.2.1 Arbitration should commence on a “documents-only” basis in which the Arbitrator should decide the Eligible Claim on the basis of documents submitted and evidence provided. Where necessary, the Arbitrator at his sole discretion may seek further information or clarification from the Parties; and request a pre-arbitration session with the parties

16.2.2 The Arbitrator will call for in-person (or video conference) formal hearings if the Arbitrator determines that such hearings are best placed for deciding the award and taking into account the individual preferences of the customer.

16.2.3 The contents of the Arbitration Act 1996 provide the legislative support for the Arbitration procedures under the Scheme. The Appointment of an Arbitrator and the Arbitration procedures are set out in detail under Rule 3 of the Scheme Arbitration Rules in Annex III.

### 16.3 Duties and obligation of Arbitrator

16.3.1 The Arbitrator shall –

- (a) facilitate a fair and speedy resolution of the Eligible Claim without incurring unnecessary expenses;
- (b) act fairly and impartially;
- (c) give both Parties a reasonable opportunity to present their cases;
- (d) adopt a procedure appropriate to the circumstances of a particular case (including customers’ communication needs and any vulnerabilities) to avoid unnecessary delay and expense;
- (e) abide by the Scheme Arbitration Rules as well as the Ethics Codes for Arbitrators set out in Annexes III and IV respectively; and
- (f) conduct the Arbitration in accordance with the Arbitration Act 1996.

16.3.2 The Arbitrator shall, unless otherwise reasonably extended by the Arbitrator, with the consent of the Parties, render an Arbitral Award within one month of the receipt of the last document in case of documents-only arbitration, or the holding of the in-person hearing whichever is later.

## 16.4 Power and jurisdiction of Arbitrator

16.4.1 The Arbitrator shall apply the governing law of the contract to determine the substantive issues in a contract claim and make an award in accordance with the Arbitration Act 1996.

16.4.2 The Arbitrator shall have the power:-

(a) to make monetary awards -

- (i) subject to the maximum claimable amount of £30,000 (inclusive of interest) for each individual claim which has been accepted as a Standard Eligible Claim;
- (ii) subject to the amount of each individual claim (inclusive of interest) which has been accepted as an Extended Eligible Claim;
- (iii) with order as to costs in relation to Arbitrations where each individual claim has been accepted as an Extended Eligible Claim;
- (iv) with no order as to costs in relation to Arbitrations where each individual claim has been accepted as a Standard Eligible Claim and the Parties shall bear their own costs;

(b) to conduct such enquiries as may appear to the Arbitrator to be necessary or expedient;

(c) to order the Parties to make any property or thing available for inspection, in their presence, by the Arbitrator;

(d) to order any Party to produce to the Arbitrator, and to the other Parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power, except where the Party satisfies the Arbitrator that -

- (i) to provide the information would breach a Court order;
- (ii) to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to the disclosure of the information has not been obtained;
- (iii) the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
- (iv) the information is irrelevant to the Eligible Claim.

Notwithstanding the aforesaid, nothing in these Terms of Reference shall prejudice any Party's right against self-incrimination or to claim legal professional privilege;

(e) to receive and take into account such written or oral evidence as he shall determine to be relevant and shall not be bound by the rules of evidence;

(f) to order a Customer to provide reasonable access to allow the Council to carry out work to a dwelling;

(g) to order the Council to carry out works to a Customer's dwelling, and/or

(h) to proceed with the Arbitration and make an Award notwithstanding the failure or refusal of any of the Parties to comply with these Terms of Reference or with the Scheme Arbitration Rules or with the Arbitrator's written orders or written directions, or to exercise its right to present its case, but only after giving the Parties written notice that they intend to do so.

## 16.5 Training and qualifications of Arbitrator

16.5.1 The Arbitrator shall be admitted to the Bar of England and Wales and should be independent and impartial and have the necessary knowledge to enable him to deal with disrepair and landlord and Tenant disputes.

16.5.2 Experience, knowledge and skills to handle disrepair disputes are required as a pre-condition of an Arbitrator.

16.5.3 The Council has the authority to decide what training, attributes and qualifications are required for its Arbitrators upon admission and renewal to the List of Arbitrators on a continuing basis.

## 16.6 Responsibilities of Council and Eligible Claimant

16.6.1 The Parties shall give full cooperation and assistance to the Arbitrator to enable the Arbitration to proceed and be concluded within the timeframe specified in Paragraph 16.3.2.

## 16.7 Termination of Arbitration

16.7.1 The Claimant may at any time after the Arbitration has started, submit a written notification to the Arbitrator to terminate the Arbitration.

16.7.2 The Arbitrator, after consultation with the Parties, may give a written advice to terminate the Arbitration if the Arbitrator's opinion is that further attempt to resolve the dispute by Arbitration is no longer practicable.

## 16.8 Arbitral Awards

16.8.1 Subject to Rule 3.12.1 of the Scheme Arbitration Rules set out in Annex III, the Arbitral Award shall be final and binding on the Parties, and not subject to review other than on a point of law.

16.8.2 If the Eligible Claim is determined in favour of the Claimant by an Arbitrator, the determination may include an order to carry out works and/or a monetary award against the Respondent of such amount as the Arbitrator considers fair compensation for any monetary loss suffered by the Claimant, and shall not include punitive or aggravated damages.

16.8.3 The maximum total monetary value (excluding costs) of the award for a Claim must not –

- (a) exceed the maximum claimable amount of £30,000 inclusive of interest for each individual claim of a Standard Eligible Claim.

16.8.4 For the purposes of awards made by the Arbitrator, monetary loss may include consequential loss and special damages.

16.8.5 A monetary award rendered in accordance with this Paragraph can be recovered or enforced through the Courts as a contractual debt.

16.8.6 Where the Arbitrator makes an award with respect to the Eligible Claim, the Parties are bound by such award. If there are any disputes as to the terms of the award, the Arbitrator's decision shall be final and conclusive.

16.8.7 The Arbitration proceedings are private and confidential and therefore, the Arbitrator's decision is not a binding legal precedent.

SECTION

**E**

# Miscellaneous

## **17. Register, use and publication of data**

- 17.1 The Council may publish data about Eligible Claims for research, evaluation or educational purposes. The nature and format of publication may include summary of statistics by sectors or nature of cases and any synopsis of individual cases without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties.

## **18. Reporting to Regulators**

- 18.1 The Council shall notify and/or submit such information within its knowledge relating to systemic issues (which relate to issues that have affected or have the potential to affect other customers of the Council or members of the public) and/or suspected failings to the Regulator.

## **19. Confidentiality**

- 19.1 The documents and correspondence in connection with the case including the Award, shall be kept by the Council in line with its policies on document retention and disposal.
- 19.2 Subject to Paragraphs 21.1 and 21.2 and save as shall be required under any written law, regulations, or an order of court, or as necessary to implement and enforce any Arbitral Award, all persons involved in the Arbitration shall keep confidential and shall not disclose or divulge (whether expressly or impliedly) to any third party:-
- (a) the matters that transpired in the course of the Arbitration;
  - (b) any views expressed, or suggestions or proposals for settlement made by any Party for the resolution of the dispute in the course of the Arbitration;
  - (c) any views expressed by the Arbitrator;
  - (d) all materials made available and communication made during the Arbitration; and/or
  - (e) all materials, information, correspondence (including emails), issues/matters discussed, proposals and counterproposals produced for or arising in relation to the Arbitration, including but not limited to any Arbitral Award, except as directly necessary to implement and enforce any such settlement agreement or award.

Nothing in this Paragraph shall prevent the Council from disclosing any such information to the Regulators or law enforcement agencies in compliance with any regulatory or statutory requirement(s), guidelines or requests. The fact that the Arbitration has occurred, is continuing or has concluded shall not be considered confidential.

- 19.3 Save as shall be required under any written law, regulations or an order of court, all materials made available, documents or other information produced for or arising in relation to the Arbitration shall be privileged and shall not be admissible as evidence or discoverable in any proceedings connected with the Eligible Claim, unless such documents would have in any event been admissible or discoverable in such proceedings.

- 19.4 The Parties shall not call the Arbitrator as a witness, consultant, mediator, arbitrator or expert in any legal or any subsequent proceedings relating to the Eligible Claim.
- 19.5 The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Arbitration.
- 19.6 The Parties shall ensure that all its officers, representatives and/or agents comply with Paragraph 19.
- 19.7 The Parties hereby expressly acknowledge and agree that any breach and/or contravention of this confidentiality rule constitutes a loss which cannot be reasonably or adequately compensated in damages. The Parties expressly agree that in the event of any such breach and/or contravention, the innocent Party shall be entitled to the remedy of injunction in addition to any other remedy available at law or in equity. The innocent Party shall also be entitled to recovery of legal costs on a full indemnity basis from the Party in breach. Additionally, the Scheme Administrator reserves the right at its full discretion, to discontinue the Arbitration with immediate effect.

## **20. Disclaimer**

- 20.1 Applicants, Eligible Claimants, the Council and their Representatives agree that the Arbitrators, Scheme Administrators and such other representatives shall not be liable for any act or omission in connection with the services provided in the course of carrying out their respective functions under these Terms of Reference, unless the act or omission is fraudulent or dishonest.

## **21. No Claim**

- 21.1 Applicants, Eligible Claimants, and their Representatives shall not make any claim whatsoever against the Council, its officers, employees and representatives, Arbitrators (save for the consequences of fraud or dishonesty), including but not limited to any claim for any matter in connection with or in relation to –
- (a) any and all the services provided by the Scheme (or any of its officers, employees or representatives);
  - (b) any Arbitration or other processes of the Scheme;
  - (c) the Eligible Claims lodged by Eligible Claimants or by the Council;
  - (d) the Claims made by Eligible Claimants or the Council;
  - (e) the Applications made by the Applicants;
  - (f) any settlements entered into between the Eligible Claimants and/or their representatives and Councils and/or any Representatives;
  - (g) any settlement agreements executed by the Eligible Claimants and/or their representatives and the Council and/or any Representatives;
  - (h) any act done in order to comply with such legal or regulatory requirement imposed by the Ombudsman, regulator or any other Government agency; and/or
  - (i) any act done in compliance with any provision of any written law of England and Wales.

- 21.2 The Council hereby expressly acknowledge and agrees that any claim or claims (save for the consequences of fraud or dishonesty) made in contravention of this Paragraph constitutes a loss which cannot be reasonably or adequately compensated in damages. The Council expressly agrees that in the event of any such claim and/or breach and/or contravention, its officers, employees, agents and/or representatives and/or the Arbitrators shall be entitled to the remedy of injunction in addition to any other remedy available at law or in equity. The Council officers, employees, agents and/or representatives and/or the Arbitrators shall also be entitled to recovery of legal costs on a full indemnity basis from the Council and/or its Representatives who have acted in breach of this Paragraph.
- 21.3 The Parties shall ensure that all its officers, representatives and/or agents comply with this Paragraph 21.



# Annexes

# Annex I-A

## Scheme Guidelines on Intake Criteria of Cases (Standard Eligible Claim)

Unless otherwise stated, this Guideline adopts the definitions used in the Terms of Reference.

- (A) The Scheme Administrator has jurisdiction to accept an application that fulfils all of the following conditions –
- (1) the application of an individual Customer Claim is brought by an Eligible Claimant or the Council with signed consent by the Parties (in the form set out at Annex VII);
  - (2) an Eligible Claimant has filed a Pre-action Protocol Letter to the Council and received a response inviting them to enter into alternative dispute resolution issued by the Council;
  - (3) the relevant repair/maintenance/improvement services provider must be the Council, its servant or agent;
  - (4) the amount for each individual claim for damages does not exceed £30,000 (including any interest on any amount alleged to be a loss);
  - (5) the dispute must arise out of a contract between the Eligible Claimant and the Council that was entered into or arose in the United Kingdom, a statutory duty or any act or omission of the Council in connection with the provision of a maintenance/repair/improvement service to an Eligible Claimant where the Council acted as an agent.
- (B) Subject to the fulfilment of all the conditions in (A), hereinunder are situations where Scheme Administrators should reject an application –
- (1) the claim is not related to a maintenance and repair/improvement; or
  - (2) the claim is without substance or is frivolous or vexatious; or
  - (3) the claim is the subject of a claim lodged with the Council's Insurers; or
  - (4) the subject matter of the claim has previously been considered or excluded by the Council; or
  - (5) the claim has been the subject of court proceedings where there has been a decided judgment on the same claim; or the claim is the subject of current court proceedings (civil or criminal, including the proceedings under the Small Claims Tribunal) unless (i) the court has ordered a stay of the proceedings or (ii) the court has been provided with proper notifications of arbitration and accompanied by documentary proof\* within 21 days from the date of the Application or any other period reasonably extended by the Scheme; or

*Note: If a Party commences legal proceedings against the other Party while the case is being processed by the Council and the Council is informed, the Scheme Administrator will forthwith discontinue the Application. There is an ongoing obligation on the part of the Parties to inform the Scheme Administrator whether any such legal proceedings against the other Party in respect of the subject matter of the Eligible Claim have been initiated while the claim is being handled by the Scheme.*

- (6) the claim is about employment matters from an employee or employees of the Council; or
- (7) the claim is about policies and practices, fees, premiums, charges or interest rates charged by the Council, except a dispute concerning an alleged non-disclosure, inadequate disclosure, misrepresentation, incorrect application, breach of any legal obligation or duty or maladministration or regulatory requirement; or
- (8) the claim involves (or might involve) more than one Eligible Claimant who is a joint tenant; and has been referred to the Scheme Administrator without the consent of the other potential claimant or claimants; or
- (9) the claim is outside the relevant limitation period as set out in the Limitation Act 1980.

*\* Documentary proof may include but not limited to a copy of the court order or note of the judge or master or acknowledge receipt of the notification to the court.*

## Annex I-B

### **Scheme Guidelines on Intake Criteria of Cases (Extended Eligible Claim)**

Unless otherwise stated, this Guideline adopts the definitions used in the Terms of Reference.

- (A) The Council has jurisdiction to accept an application that fulfils all of the following conditions –
  - (1) the application of a Claim must be brought in either of the following situations and with signed consent by the Parties (in the form set out at Annex VII):
    - (a) where a Council Claim or Council Counterclaim is brought by the Council.
    - (b) where a pre-action protocol letter has been issued to the Council
  - (2) the relevant repair and maintenance/improvement services provider must be the Council, their servants or agents;
  - (3) where the amount for the individual claim for damages is likely to exceed £30,000 (including any interest on any amount alleged to be a loss) the application is allowed by exception following advice from the Council's legal services team.
  - (4) the dispute must arise out of a contract between the EC and the Council that was entered into or arose in the United Kingdom, or statutory repair and maintenance duties; any act or omission of the Council in connection with the provision of a repair and maintenance/improvement service to an EC where the Council is the freeholder or EC's landlord.

- (B) Subject to the fulfilment of all the conditions in (A), hereinafter are situations where Case Officers should reject an application –
- (1) the claim is not related to a repairs and maintenance/improvement service; or
  - (2) the claim is without substance or is frivolous or vexatious; or
  - (3) the claim is the subject of a complaint lodged with the Council's Insurers which is currently under the Council's Insurers' consideration; or

*Note: If the claimant lodged a claim against the Council with the Council's Insurers while the case is being processed by the Council and the Council is informed, the case will be discontinued. There is an ongoing obligation on the part of the Parties to inform the Scheme Administrator whether any such claim against the Council with the Council's Insurers in respect of the subject matter of the Eligible Claim has been initiated.*

- (4) the subject matter of the claim has previously been considered or excluded by the Council; or
- (5) the claim has been the subject of court proceedings where there has been a decided judgment on the same claim; or the claim is the subject of current court proceedings (civil or criminal, including the proceedings under the Small Claims Tribunal) unless (i) the court has ordered a stay of the proceedings or (ii) the court has been provided with proper notifications of arbitration and accompanied by documentary proof\* within 21 days from the date of the Application or any other period reasonably extended by the Scheme Administrator; or

*Note: If a Party commences legal proceedings against the other Party while the case is being processed by the Council and the Council is informed, the Council will forthwith discontinue the Application. There is an ongoing obligation on the part of the Parties to inform the Scheme Administrator whether any such legal proceedings against the other Party in respect of the subject matter of the Eligible Claim have been initiated while the claim is being handled by the Council.*

- (7) the claim is about employment matters from an employee or employees of the Council; or
- (8) the claim involves (or might involve) more than one Eligible Claimant who are joint tenants and has been referred to the Council without the consent of the other claimant or claimants.
- (9) the claim is outside the relevant limitation period as set out in the Limitation Act 1980.

*\* Documentary proof may include but not limited to a copy of the court order or note of the judge or master or acknowledge receipt of the notification to the court.*

# Annex II

Disrepair Arbitration Scheme Application Form (Individuals / Joint Tenants)

## Application Form

Are you filling this application on behalf of someone else

No, it's for me

Yes (Please provide details)

Date of Application:

Are you a Lambeth Council?

Tenant

Leaseholder

\*(For joint-tenants only)

1 Name

(\* Delete where appropriate)

\*Mr/Ms/Mrs/Miss

\*Mr/Ms/Mrs/Miss

2 Address of Property (you are making the claim against).

3 Telephone No.

4 Email Address

5 Correspondence Address (if different from 2 above)

Who else lives in the property with you (name and date of birth)

## Details of the Claim

Please provide as much detail as possible.

Please include the following:

- Issue with the property
- How have you reported this previously
- How has it impacted on your life?
- Has damage occurred to your personal belongings?
- Have you lost use of some of the rooms in your home?
- Have you had a loss of earnings?
- What contact have you had from the council / contractors?

## Actions taken in respect of the Claim

- 1 Have you made a written complaint to the Council? [if you haven't made a formal complaint it may be appropriate to do that before arbitration].

Please provide the complaint reference number and date if you have it.

Yes. The date:

Please describe the complaint you have lodged:

No

- 2 Has the Council responded to your complaint in writing?

Yes. The date:

No

- 3 Has the Council offered any settlement / redress?

Yes. The details:

No

- 4 Has any court action been taken?\*

Yes. The court file ref.:

Stay of the court proceedings

Proper notification to the court

Decided judgment

No

*\*The Council does not have jurisdiction to handle a claim where there has been a decided judgment in court proceedings; or the court has not ordered a stay of the proceedings or has not been provided with proper notification.]*

5 Have you lodged a complaint with the Council's Insurers?\* [See Note (4)]

Yes. The file ref.:

No

*\*The Council does not have jurisdiction to handle a claim which is currently under the Council's insurer's consideration.]*

6 Have you lodged a complaint with the Housing Ombudsman?

Yes. The complaint file ref.:

No

### Supporting Documents

If you have any supporting documents, such as letters of complaint, please upload here or include when you post in.

Yes

(\_\_\_\_\_ set of documents, \_\_\_\_\_ pages)

No

### Language Preferences:

Please state:

Postal

Email

By telephone

### Notice to the Gathering of Personal Data

The personal data provided by the Applicant under this Form is for the purpose of processing the dispute in the procedures as prescribed in the Terms of Reference. The personal data so provided will be handled by or revealed to the personnel of the Council.

### Declaration

1.  I/We agree

I/We do not agree

to give consent for this information to be shared with Arbitrator and / or the expert.

2. I/We agree to cooperate with the personnel of the Council by providing all relevant documents and information, when requested, including information that may be personal data, for the Council to assess whether the Application may be accepted under the Scheme administered by the Council. The consequence of not providing some or all of the requested personal data may be that Council is unable to process my/our application.

3. I/We agree that the information and personal data I/we have voluntarily provided in this Form is for the purpose of processing my/our application under the Terms of Reference. The information and personal data provided will be handled by or revealed to the personnel of the Council and may be used for research, evaluation and educational purposes, provided that the Council shall not use information which reveals, or is likely to reveal, directly or indirectly, my/our identity(ies).
4. I/We am/are aware that I/we have the right to request access to and correction of my/our personal data submitted for this application and for processing the dispute under the Scheme. Formal requests under the Data Protection Act 2018 should be submitted in writing to the Data Protection Officer at the Council. Such personal data will be retained until the end of the following calendar year after my/our application is rejected or until the end of the 6th calendar year after the dispute has been processed by the Council through Arbitration or otherwise.
5. I/We agree to inform the Council if, after this application has been made, a claim against the Council has been lodged with the Council's Insurers and/or legal proceedings against the Council have been commenced.
6. I/We agree to abide by the Terms of Reference.
7. I/We confirm that the information provided in this application Form is true, complete and accurate.

Signature(s)

Name

(Applicant 1)

(Applicant 2- For joint-tenants only)

### **Notice to the Gathering of Personal Data**

The personal data provided by the Applicant and its representatives (collectively known as "We" in the Declaration below) under this Form is for the purpose of processing the dispute in the procedures as prescribed in the Terms of Reference. The personal data so provided will be handled by or revealed to the personnel of the Council.

We currently collect and process the following information:

- Personal identifiers, contacts and characteristics (for example, name and contact details);
- Information concerning repairs to your property;

How we get the personal information and why we have it.

Most of the personal information we process is provided to us directly by you for one of the following reasons:

- to comply with statutory and contractual duties in respect of the maintenance and repair of your dwelling and consequential information

We also receive personal information indirectly, from the following sources in the following scenarios:



- contractors carrying out work to your property;
- Your legal representative pursuing your claim

We may share this information with the Arbitrator

Under the General Data Protection Regulation (GDPR), the lawful bases we rely on for processing this information are:

- (a) Your consent. You are able to remove your consent at any time.
- (b) We have a contractual obligation.
- (c) We have a legal obligation.
- (d) We need it to perform a public task.

How we store your personal information:

Your information is securely stored.

We keep this type of personal information for six years. We will then dispose of your information by deleting computer records of your claim.

### **Your data protection rights**

Under data protection law, you have rights including:

Your right of access - You have the right to ask us for copies of your personal information.

Your right to rectification - You have the right to ask us to rectify personal information you think is inaccurate. You also have the right to ask us to complete information you think is incomplete.

Your right to erasure - You have the right to ask us to erase your personal information in certain circumstances.

Your right to restriction of processing - You have the right to ask us to restrict the processing of your personal information in certain circumstances.

Your right to object to processing - You have the right to object to the processing of your personal information in certain circumstances.

Your right to data portability - You have the right to ask that we transfer the personal information you gave us to another organisation, or to you, in certain circumstances.

You are not required to pay any charge for exercising your rights. If you make a request, we have one month to respond to you.

Please contact us at [insert email address, phone number and or postal address] if you wish to make a request.

### **How to complain**

If you have any concerns about our use of your personal information, you can make a complaint to us at:

Email: [infogov@lambeth.gov.uk](mailto:infogov@lambeth.gov.uk)

Telephone: 020 7926 7717

Address:

London Borough of Lambeth  
PO Box 734  
Winchester  
S023 5DG

You can also complain to the ICO if you are unhappy with how we have used your data.

The ICO's address:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Helpline number: 0303 123 1113

ICO website: <https://www.ico.org.uk>

**Declaration**

1.

We agree

We do not agree

to give consent to the Council to provide the information in this Form to the arbitrators.

# Annex III

## Disrepair Arbitration Scheme Rules

### 1. Definitions

Unless otherwise stated, these Rules adopt the definitions used in the Terms of Reference.

### 2 Arbitration under the Rules

- 2.1 The Arbitration may be commenced on a “documents-only” basis by the Claimant giving to the Council a Notice to Arbitrate in written form together with all written submissions and copies of supporting documents.
- 2.2 The Notice to Arbitrate shall include the following:
- (a) a request that the Eligible Claim be referred to Arbitration;
  - (b) the names and contact details of the Parties;
  - (c) identification of the arbitration agreement that is invoked;
  - (d) identification of any contract or other legal instrument out of or in relation to which the Eligible Claim arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
  - (e) a brief description of the Claim and an indication of the amount involved;
  - (f) the relief or remedy sought;
  - (h) authorised signature with date.
- 2.3 The Council shall then notify the Eligible Claimant of the receipt of the Notice to Arbitrate and the date of such receipt.
- 2.4 The appointment of the Arbitrator shall not be hindered by any controversy with respect to the sufficiency of the Notice to Arbitrate, which shall be finally resolved by the Arbitrator. The Claimant shall rectify any non-compliance in the Notice to Arbitrate upon request within 7 days of the receipt of such request.
- 2.5 The Arbitration shall be deemed to commence on the date on which the Notice to Arbitrate is received.
- 2.6 Unless otherwise indicated, the Respondent shall, within 21 days of the service of the Notice to Arbitrate, send to the Claimant a response to the Notice to Arbitrate, their written submissions together with copies of the documents relied on additional to those already provided by the Claimant.
- 2.8 The response to the Notice to Arbitrate shall be informed by the Application form and include:
- (a) the name and contact details of the Respondent;
  - (b) any response to the information set forth in the Notice to Arbitrate pursuant to Rule 3.2.3;
  - (c) a proposal on the appointment of Arbitrator and the language of Arbitration;  
and
  - (d) authorised signature with date.

- 2.9 Upon receipt of the Notice to Arbitrate and the relevant response from the Parties, a single Arbitrator will be appointed pursuant to Rule 3.4 who shall resolve any dispute or controversy, if any, in connection with the language of the Arbitration and/or the sufficiency of the Notice to Arbitrate and/or the relevant response.
- 2.10 The appointment of the Arbitrator shall not be hindered by any controversy with respect to the Respondent's failure to communicate a response to the Notice to Arbitrate, or an incomplete or late response to the Notice to Arbitrate which shall be finally resolved by the Arbitrator. The Respondent shall rectify any non-compliance in the response to the Notice to Arbitrate upon request within 10 working days of the receipt of such request.
- 2.11 The Claimant's final submissions (if any) on the Claim shall be provided to the Respondent within 21 days after receipt of the Respondent's response, submissions and documents.
- 2.12 The Arbitrator shall give notice to the Parties of his intention to proceed with the rendering of Arbitral Award and will so proceed unless either Party within 7 days requests, and is thereafter granted, leave to serve further submissions.

### **3. Deficient Claims**

- 3.1 The Scheme Administrator shall review the Notice to Arbitrate, submissions and documents received for administrative compliance review and shall proceed with the appointment of Arbitrator, if all in compliance.
- 3.2 The Scheme Administrator will not proceed with appointing an Arbitrator if the Claim is deficient. The reasons for deficiency include but are not limited to the following:
- (a) the Claim was not filed by the relevant Claimant;
  - (b) documents were not properly signed and/or dated;
  - (c) the names and particulars of the Parties were not provided;
- 3.3 The Scheme Administrator will notify the Claimant in writing if the Claim is deficient. Unless otherwise extended if all deficiencies are not corrected within 7 days, the Council may close the case.

### **3.4 Appointment of Arbitrator**

- 3.4.1 The Scheme Administrator shall transfer all relevant data, information and materials relating to and necessary for the Arbitration from the Parties to the Arbitrator.
- 3.4.2 The Scheme Administrator shall appoint a single Arbitrator from the List of Arbitrators as soon as practicable. Where possible the Scheme Administrator will provide the Claimant a choice from up to 3 Arbitrators.
- 3.4.3 The appointment of the Arbitrator takes effect upon confirmation in writing by the Scheme Administrator.

### **3.5 Disclosures Required of Arbitrators**

- 3.5.1 The Arbitrator appointed under these Rules shall be and remain at all times impartial and independent in exercising his duties in the Arbitration.

3.5.2 Before appointing an Arbitrator, the Scheme Administrator will notify the Arbitrator of the nature of the dispute and the identities of the Parties. The Arbitrator must make a reasonable effort to learn of, and must disclose to the Scheme Administrator, any circumstances which might preclude the potential Arbitrator from rendering an objective, independent and impartial determination in the proceeding, such as:

- (a) Any direct or indirect financial or personal interest in the outcome of the Arbitration;
- (b) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any Party, or anyone who the potential Arbitrator is told may be providing a witness statement and/or an expert statement in the Arbitration, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias; or
- (c) Any such relationship or circumstances involving members of the potential Arbitrator's family or the potential Arbitrator's current employers, partners, or business associates.

3.5.3 The obligation under Rule 3.5.2 to disclose interests, relationships, or circumstances that might preclude a potential Arbitrator from rendering an objective, independent and impartial determination is a continuing duty that requires an Arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

3.5.4 The Scheme Administrator will inform the Parties of any information disclosed under Rules 3.5.2 and 3.5.3 by the potential Arbitrator and/or the Arbitrator unless the potential Arbitrator declines appointment or voluntarily withdraws from the Arbitration as soon as the Arbitrator learns of any interest, relationship or circumstance that might preclude the Arbitrator from rendering an objective, independent and impartial determination in the proceeding, or the Council removes the Arbitrator.

3.5.5 Subject to Rules 3.5.2 and 3.5.3, the Arbitrator shall confirm in writing that there is no conflict of interest in relation to his appointment as the Arbitrator to the Eligible Claim.

3.5.6 The appointment of the Arbitrator takes effect upon confirmation in writing to the Parties. If the Arbitrator is replaced, the Arbitration shall resume at the stage where the Arbitrator was replaced or ceased to perform his functions, unless the substitute Arbitrator decides otherwise.

### **3.6 Removal of Arbitrator**

3.6.1 The Scheme Administrator may remove an Arbitrator for conflict of interest or bias, either upon request of a Party or on the Scheme Administrator's own initiative.

3.6.2 The Scheme Administrator will grant a Party's request to remove an Arbitrator if it is reasonable to infer, based on information known at the time of the request, that the Arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative.

3.6.3 The Scheme Administrator must first notify the Parties in writing before removing an Arbitrator on its own initiative. The Scheme Administrator may not remove the Arbitrator if the Parties agree in writing to retain the Arbitrator within 7 days of receiving notice of the Scheme Administrator's intent to remove the Arbitrator.

### **3.7 Jurisdiction of the Arbitrator to Interpret these Rules**

3.7.1 In the conduct of Arbitration proceedings, the Arbitrator shall have the authority to interpret and determine the applicability of all provisions under these Rules. Such interpretations are final and binding upon the Parties.

### **3.8 The Arbitration Procedures**

3.8.1 The Arbitrator shall conduct and decide the Eligible Claim on the basis of the documents submitted and evidence provided. Each Party shall bear the burden of proof for its own case.

3.8.2 In all cases, the Arbitrator shall ensure that the Parties are treated impartially and that each Party is given a reasonable opportunity to present its case, give its reasons and provide evidence.

3.8.3 Where the Arbitration is by "documents-only",

(a) no hearing will be held;

(b) no initial prehearing conference or other prehearing conference will be held, and the Arbitrator will render an Arbitral Award based on the submissions and other materials submitted by the Parties; and

(c) no legal representatives, including in-house lawyers, are allowed to act on behalf of either Party in the Arbitration apart from written representations as the arbitrator directs.

3.8.4 The Arbitrator may request in his sole discretion, further information, statements or documents from either of the Parties. The arbitrator may request the use of expert witnesses (building surveyors for example). These could be individual experts or joint experts as appropriate to the dispute being considered.

3.8.5 The Parties may request documents and other information from each other. Unless otherwise specified, all requests for the production of documents and other information must be served on the other Party within 14 days from the date of the Claimant's final submissions. Any response or objection to a discovery request must be served on the other Party within 7 days of the receipt of the requests. The Arbitrator will resolve any discovery disputes.

3.8.6 Without prejudice to the above and with regard to the Arbitration, the Arbitrator shall have the power and/or jurisdiction to:

(a) make monetary awards

(i) subject to the maximum claimable amount for each Customer Claim which has been accepted as a Standard Eligible Claim;

(ii) subject to the amount of each individual claim (inclusive of interest) which has been accepted as an Extended Eligible Claim;

(iii) with order as to costs in relation to Arbitrations where each individual claim has been accepted as an Extended Eligible Claim;

(iv) with no order as to costs in relation to Arbitrations where each individual

claim has been accepted as a Standard Eligible Claim and the Parties shall bear their own costs;

- (b) conduct such enquiries as may appear to the Arbitrator to be necessary or expedient;
- (c) order the Parties to make any property or thing available for inspection, in their presence, by the Arbitrator;
- (d) order a party to carry out works
- (e) order a party to provide reasonable access to inspect and/or carry out works
- (f) order any Party to produce to the Arbitrator, and to the other Parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power, except where the Party satisfies the Arbitrator that –
  - (i) to provide the information would breach a Court order;
  - (ii) to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to the disclosure of the information has not been obtained;
  - (iii) to provide the information would prejudice an ongoing investigation by the police, the Regulators or other law enforcement agencies, and, despite all reasonable endeavours, the consent to the disclosure of the information has not been obtained;
  - (iv) the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
  - (v) the information is irrelevant to the Eligible Claim.

Notwithstanding the aforesaid, nothing in the Terms of Reference shall prejudice any Party's right against self-incrimination or to claim legal professional privilege;

- (e) receive and take into account such written or oral evidence as he shall determine to be relevant and shall not be bound by the rules of evidence; and/  
or
- (f) proceed with the Arbitration and make an Arbitral Award notwithstanding the failure or refusal of any of the Parties to comply with the Terms of Reference or these rules or with the Arbitrator's written orders or written directions, or to exercise its right to present its case, but only after giving the Parties written notice that he intends to do so.

3.8.7 At any stage of the Arbitration, where the Arbitrator is aware and considers that it would be more suitable for the subject matter of the Eligible Claim to be dealt with by a court, the Arbitrator may terminate the Arbitration and advise the Parties the appropriate steps to take.

3.8.8 In any case the Arbitrator shall, unless otherwise reasonably extended by the Arbitrator, with the consent of the Parties, render an Arbitral Award within one month of the receipt of the last document in case of documents-only arbitration, or the holding of the in-person hearing whichever is later.

3.8.9 Within 7 days of receiving the Arbitral Award, a Party may by written notice to the Scheme Administrator and the other Party request the Arbitrator to correct in the Arbitral Award any clerical or typographical errors or any errors of a similar nature.

Any such corrections shall be given in writing to the Parties and shall become part of the Arbitral Award within 7 days of the written notice.

### **3.9 In-Person Hearing**

3.9.1 Taking into account any representations from the Claimant, the Arbitrator shall determine, in his sole discretion, whether an in-person or video conference hearing is necessary for deciding the Claim.

### **3.10 Communication between the Parties and the Arbitrator**

3.10.1 Any written communication to the Claimant or the Respondent provided for under the procedure shall be made by the preferred means stated by the Claimant or the Respondent respectively, or in the absence of such specification, by postal or courier service, with a delivery confirmation; or electronically via the Internet, provided a record of its transmission is available.

### **3.11 Confidentiality**

3.11.1 Subject to Rule 3.11.2, the Parties and the Arbitrator agree not to disclose, transmit, introduce or otherwise use any documents, communications, opinions, suggestions, proposals, offers, or admissions, or other information obtained or disclosed during the Arbitration by the Parties or the Arbitrator as evidence in any judicial proceedings, other arbitrations or proceedings, unless agreed in writing by the Arbitrator and the Parties to the Arbitration or compelled by law. The fact that Arbitration has occurred, is continuing, or has concluded shall not be considered confidential.

3.11.2 The Parties acknowledge that, by agreeing to arbitrate under these Rules, they agree and accept that information relating to the Arbitration shall be used by the Council for purposes of study, improving services, ensuring fairness and promotion of arbitration provided that the Parties' identity, property address and any reference that may lead to their identity being made known shall be omitted or obliterated from such information.

### **3.12 Appeal on point of law**

3.12.1 Sections of the Arbitration Act providing for appeal against Arbitral Award on question of law shall apply.

3.12.2 In the event an appeal against the Arbitral Award in the Arbitration is brought by a Party, that appealing Party agrees the recoverable legal costs incurred in, arising out of and/or resulting from such an appeal shall be limited to £3,000 for Standard Eligible Claims.

### **3.13 Issues not covered by these Rules**

3.13.1 For matters which are not covered by these Rules, the Arbitrator may adopt such measures as he deems appropriate, consistent with the need for a speedy and efficient resolution of the Eligible Claim, provided the Parties shall be given reasonable opportunities to address their concern with the Arbitrator.

## **4. Fees and Costs**

4.1 The Council and or the Arbitrator may provide the venue for conducting the Arbitration. The Eligible Claimant may have to bear the cost of a venue for conducting the Arbitration if they are unwilling to use the rooms at Council buildings.



# Annex IV

## **Ethics Code for Scheme Arbitrators**

The Oxford English Dictionary defines ‘ethics’ as “moral principles or rules of conduct”. A Code of Ethics provides a set of moral principles according to which one can conduct one’s affairs.

The purpose of adopting a code of ethics for Arbitrators is not only to serve as a guide to the conduct of Arbitrators, but also to serve as a point of reference for users of the Arbitration and to promote public confidence in Arbitration as a suitable forum for resolving disputes. The Code itself is not a rigid set of rules but is a reflection of internationally acceptable norms.

In some instances the ethics set down herein may be repeated in legislation governing the arbitration, case law or rules which Parties adopt. In many instances, Arbitrators will also be bound by other codes of practice or conduct imposed upon them by virtue of membership of primary professional organisations.

### **Rule One**

An Arbitrator has an overriding obligation to act fairly and impartially as between the Parties, at all stages of the proceedings.

### **Rule Two**

An Arbitrator shall be free from bias and shall disclose any interest in the Arbitration or relationship with any party likely to affect his impartiality or which might reasonably create an appearance of partiality or bias. An Arbitrator in such situation shall obtain the prior written consent of all Parties before proceeding with the Arbitration. This is an ongoing duty and does not cease until the Arbitration has concluded. Failure to make such disclosure itself may create an appearance of bias, and may be a ground for disqualification.

An Arbitrator shall not permit outside pressure, fear of criticism or any form of self-interest to affect his decisions. An Arbitrator shall decide all the issues submitted for determination after careful deliberation and the exercise of his own impartial judgment.

An Arbitrator in communicating with the Parties shall avoid impropriety or the appearance of impropriety. There shall be no private communications between an Arbitrator and any party, regarding substantive issues in the case. All communications, other than proceedings at a hearing, should be in writing. Any correspondence shall remain private and confidential and shall not be copied to anyone other than the Parties to the dispute, without the agreement of the Parties.

An Arbitrator shall not accept any gift or substantial hospitality, directly or indirectly, from any Party to the Arbitration, except in the presence of the other Parties and/or with their consent.

### **Rule Three**

An Arbitrator shall only accept an appointment if he has suitable experience and ability for the case and available time to proceed with the Arbitration.

**Rule Four**

An Arbitrator shall be faithful to the relationship of trust and confidentiality inherent in that office.

**Rule Five**

An Arbitrator shall charge according to the Schedule of Fees in Annex VIII of the Terms of Reference (TBC).

**Rule Six**

An Arbitrator may use the name and/or logo of the Scheme to promote the Scheme and its service. An Arbitrator may show that he is on the List of Arbitrators maintained by the Scheme to promote the Scheme and its service and his private practice.

**Rule Seven**

An Arbitrator shall consider whether it is appropriate to be covered by professional indemnity insurance and if so, shall ensure that he is adequately covered.

# Annex V

## ARBITRATION AGREEMENT

THIS AGREEMENT IS MADE ON \_\_\_\_\_

BETWEEN THE FOLLOWING PERSONS (in this Agreement called the 'Parties')

\_\_\_\_\_

(Name of Party: Please Print) (Name of Party: Please Print)

### SUMMARY OF THE DISPUTE

The Parties agree to enter into Arbitration to resolve issues in relation to the \_\_\_\_\_  
\_\_\_\_\_ ("the Eligible Claim").

Unless otherwise defined in this Agreement, capitalised terms in this Agreement have the meaning given to them in Paragraph 2 of the Terms of Reference of the Disrepair Arbitration Scheme ("Scheme")

### ARBITRATION AGREEMENT

1. Parties agree that any dispute, controversy or claim arising out of or relating to this Eligible Claim shall be resolved by arbitration administered by the Council in accordance with the Scheme Arbitration Rules :-
  - (a) the number of arbitrators shall be one only and this arbitrator shall be selected from the List of Arbitrators;
  - (b) the Council shall act as the appointing authority, and shall appoint a single arbitrator from the List of Arbitrators which the Parties herewith agree as the basis for the appointment of the arbitrator;
  - (c) the place of Arbitration shall be in United Kingdom; and
  - (d) the Arbitration shall be conducted in such language(s) as the Arbitrator sees fit.

Our Ref: \_\_\_\_\_

Date Received:

### GOVERNING LAW

2. This Agreement is governed by the law of the United Kingdom and the courts of the United Kingdom shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Arbitration.

### SIGNING OF THE ARBITRATION AGREEMENT

Date: \_\_\_\_\_

Name of Party (Please print and sign here)

Name of Party (Please print and sign here)

# Annex VI

## CONFIDENTIALITY AGREEMENT

In consideration of my being permitted to attend / give advice or opinion for the Arbitration between \_\_\_\_\_ (Party A) and \_\_\_\_\_ (Party B), I agree to be personally bound by the confidentiality provisions (Clause 11) of the Agreement to Arbitrate signed by the Parties on \_\_\_\_\_ (Date) as if I was a Party to the Arbitration and undertake to the Parties and the Arbitrator that I will not disclose or use any information relating to the Arbitrator nor act as a witness in any subsequent proceedings.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name and Capacity (in print): \_\_\_\_\_

\*Clauses 3.11.1 and 3.11.2 of the Agreement to Arbitrate provide as follows:-

“

- 3.11.1 Subject to Rule 3.11.2, the Parties and the Arbitrator agree not to disclose, transmit, introduce or otherwise use any documents, communications, opinions, suggestions, proposals, offers, or admissions, or other information obtained or disclosed during the Arbitration by the Parties or the Arbitrator as evidence in any judicial proceedings, other arbitrations or proceedings, unless agreed in writing by the Arbitrator and the Parties to the Arbitration or compelled by law. The fact that Arbitration has occurred, is continuing, or has concluded shall not be considered confidential.
- 3.11.2 A copy of the Notice to Arbitrate and the Arbitral Award shall be kept by the Scheme Administrator. The Parties acknowledge that, by agreeing to arbitrate under these Rules, they agree and accept that information relating to the Arbitration shall be used by the Council for purposes of study and promotion of arbitration provided that the Parties' identity and any reference that may lead to their identity being made known shall be omitted or obliterated from such information.

# Annex VII

Joint Consent to Submission of Claim(s) under  
the Disrepair Resolution Scheme ("Scheme")

Please put a "✓" in [ ] where appropriate.

We, (The London Borough of Lambeth ("the Council")) and

(name of customer of the Council) \_\_\_\_\_

agree and consent that the below stated claim and choice of dispute resolution process shall be handled under the Scheme in accordance with the Scheme Rules, and subject to the attached Informed Consent Form signed by the customer:

I. Type of claim:

1. a claim of customer against Council brought by the Council (which will only proceed in Arbitration if it is a Standard Eligible Claim).
2. an Council counterclaim against the customer brought by Council to be handled individually or alongside with claim of customer against the Council.
3. an Council claim brought by Council against the customer.

Name of customer (Please print and sign here)

The London Borough of Lambeth (Please sign here)

Date:

Our Ref: \_\_\_\_\_

Date Received:

Informed Consent Form

I/We am/are the customer(s) of the \_\_\_\_\_.

(The London Borough of Lambeth)

I/We have made a claim with Lambeth Council (the Council)

at \_\_\_\_\_ on \_\_\_\_\_.

(Time) (Date)

## Declaration

1. I/We acknowledge that the Council has explained the Scheme services and understand the services.
2. I/We fully understand that I/we may solicit independent legal advice or expert opinion on the dispute resolution process and my/our consent given under Joint Consent to Submission of Claim(s) under the Scheme and its implications.

Name of customer 1 (Please print and sign here)

Name of customer 2 (For joint-tenant) (Please print and sign here)

Date:

Our Ref:

Date Received:





