



EAST AYRSHIRE COUNCIL
GOVERNANCE AND SCRUTINY COMMITTEE

**REVIEW OF INSURANCE ARRANGEMENTS PROVIDED
BY CONTRACTORS CARRYING OUT WORK ON
BEHALF OF THE COUNCIL**

Report by the Members of the
Governance & Scrutiny Committee

NOVEMBER 2011

EAST AYRSHIRE COUNCIL

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CONTENTS

| SECTION OF REPORT | | PAGE NO |
|------------------------------|---|----------------|
| 1. | Background | 1 |
| 2. | The Review | 1 |
| | 2.1 Terms of Reference | 1 |
| | 2.2 Desired Outcomes | 1 |
| | 2.3 Awareness Raising Presentation | 1 |
| | 2.4 Documents and Evidence | 2 |
| 3. | Current East Ayrshire Council Position | 2 |
| | Initial Claim Process | 2 |
| | Progress of Claims | 3 |
| | Conditions of Contract | 3 |
| | Contractor's Insurance | 5 |
| 4. | Methodology | 5 |
| | 4.1 Consultation | 5 |
| | 4.2 Witnesses | 6 |
| | 4.3 Consideration of Evidence | 6 |
| 5. | Conclusions | 6 |
| 6. | Recommendations | 8 |
| | Annexations - | |
| | Annex A Council Questionnaire Responses | 10 |
| | Appendix 1 Housing Asset Services - Public Liability Incident Report | 23 |
| | Appendix 2 Contractor's Insurance Questionnaire | 32 |
| | Appendix 3 Performance Monitoring Systems | 36 |
| | Appendix 4 Sample Letter of Occupiers | 39 |
| | Appendix 5 Supplier's Insurance Questionnaire | 41 |

| | |
|--|-----------|
| Appendix 6 Standard Building Contract with Quantities | 44 |
| Appendix 7 West Lothian Response | 50 |
| Annex B Contractor Responses | 51 |
| Appendix 1 McTear Contracts Ltd Complaints Procedure | 53 |
| Appendix 2 CFM Building Services Complaints Procedure | 55 |
| Annex C Tenants Questionnaire Responses | 57 |

November 2011

SN/LY/FM

EAST AYRSHIRE COUNCIL

GOVERNANCE & SCRUTINY COMMITTEE - 25 NOVEMBER 2011

REVIEW OF INSURANCE ARRANGEMENTS PROVIDED BY CONTRACTORS CARRYING OUT WORK ON BEHALF OF THE COUNCIL

Report by Governance and Scrutiny Committee

1. BACKGROUND

- 1.1 The Governance and Scrutiny Committee, at its annual workshop held on 28 January 2010, agreed to undertake a review of insurance arrangements provided by contractors carrying out work on behalf of the Council and the Committee, on 23 April 2010, approved the scoping paper for the review.

2. THE REVIEW

2.1 Terms of Reference

- 2.1.1 The Terms of Reference for this review were:-

- to confirm and evaluate the Public Liability Insurance arrangements which contractors operating on behalf of the Council have in place to deal with East Ayrshire residents' insurance claims;
- to confirm and evaluate the existing processes which the Council has in place for checking contractors' insurance details to ensure that they have adequate levels of Public Liability Insurance; and
- to identify whether there are any improvements which can be made to the existing arrangements and processes and to make recommendations accordingly.

2.2 Desired Outcomes

- 2.2.1 The desired outcomes of the review were:-

- to ensure that contractors operating on behalf of the Council have insurance arrangements in place to properly and proportionately deal with East Ayrshire residents' claims;
- to give comfort to our residents that where detriment is caused by contractors, negligence in the course of carrying out operations on behalf of the Council, commensurate compensation arrangements are in place.

2.3 Awareness Raising Presentation

- 2.3.1 Following the decision to proceed with this review, the Committee received an awareness raising presentation by the Risk Manager on Friday 22 October 2010 which set out the key aspects relating to the topic including legal framework, the Law of Negligence, Public Liability Insurance, duties of

claimants and the Council, and the current arrangements for dealing with claims and associated aspects.

2.3.2 As a result of the presentation and the discussion arising from the presentation, a range of issues were identified which the Members agreed should be given further consideration, namely:-

- the level and nature of information provided to tenants and when;
- the level and nature of the responsibility which falls upon East Ayrshire Council given that the works contract is led by the Council and, arising from this, how assistance could be provided to tenants in pursuing claims, perhaps through the introduction of an independent advocacy service;
- in relation to contractors' responsibilities with regard to processing of insurance claims the possible inclusion of claims performance assessment criteria at the outset when any major contract is being procured; and
- matters around the effect of the incidence of insurance claims associated with quality of work/conduct of operatives, and the potential impact of carrying out pre-start inspections and the taking of evidence prior to commencement of contract works, including photographic evidence.

2.4 Documents and Evidence

2.4.1 Following the awareness raising presentation on Friday 22 October 2010, Members were issued with a range of documentation to provide relevant background information in relation to the review, as follows:-

- a blank incident report which is completed by the claimant;
- a blank Zurich Municipal Public Liability form which is completed by the Department when the claim is over £500 and/or a personal injury is involved;
- a sample claim file where East Ayrshire Council has handled the claim from start to finish;
- a sample Public Liability claim form where the claimant was directed to the external contractor's insurance; and
- a sample claim file where the contractor has gone into liquidation and the claim was referred to the Council's insurers - Zurich Municipal.

3. CURRENT EAST AYRSHIRE COUNCIL POSITION

Initial claim process

3.1 East Ayrshire Council currently has in place provisions and protocols to deal with any claim arising from work carried out by contractors on behalf of the Council. Prior to any contract commencing, tenants are provided with the telephone number for East Ayrshire Council's Customer Support Section, and any claim form is generally returned to the Customer Support Section and logged in RESPOND in the first instance, and a letter forwarded to the private contractor with a 14 day deadline in which to investigate and respond to the claimant. If the claim relates to Asset Services contract work, the claim is logged by the Risk and Insurance Section and is referred to the contract

supervisor to investigate and compile a Supervisor's report which is then forwarded to the Risk and Insurance Section with any supporting documentation.

- 3.2** If the claim exceeds £500 or relates to personal injury, then the claim details are passed immediately to the Risk and Insurance Section so that they ensure that Zurich, the Council's Insurers are made aware of the pending claim. Depending upon the loss circumstances, tenants may be advised to consider their insurance position under their own household insurance policy. If said policy covers the loss sustained, then they may wish to consider claiming under it to (a) minimise any delay in resolving the matter, (b) ensure that the loss is settled on a reinstatement basis (Public Liability policies operate on an Indemnity basis where insurers will make a deduction for wear tear and depreciation.) and (c) allow the claimant to request that their insurer recover the clients uninsured losses such as their policy excess, in pursuing recovery against the contractor/its' insurers.

NB: Insurers are not obliged to take such action but, in practice, many will agree to assisting the client in recovering such costs.

Progress of claims

- 3.3** With regards to a monitoring role in respect of insurance claims, all claims which are logged in RESPOND are set with tasks so that these claims can be monitored. This may include deadlines for contractors responding to the claimant or the supervisor compiling reports. The Customer Support Section would be notified by the contractor whether the claim has been settled or repudiated. If the Customer Support Section are informed that the claim has been settled, evidence would be requested, ie that the disclaimer form has been signed by the claimant. If confirmation is not provided then the Customer Support Section contact the claimant directly to ensure that the claim has been settled. All contractors are advised to obtain the disclaimer form signed by the claimant when making any settlement.
- 3.4** Where a claim is forwarded to the Risk and Insurance Section, it is no longer monitored by the Customer Support Section, however, updates will be received from the Risk and Insurance Section or Zurich and are noted in the system.
- 3.5** With regard to the right of appeal in connection with an insurance claim, the guidance notes which are issued with the insurance claim form include details of the right of appeal section to assist claimants if they wish to appeal against the outcome of their claim.

Conditions of contract

- 3.6** When selecting a contractor to undertake work on behalf of the Council, all contractors must have a minimum of £5m Public Liability and must complete the Council's insurance questionnaire. Failure to do so would mean that any bid by the contractor would be non-compliant.

- 3.7** With regard to contract tender documentation, specific information relating to insurance is asked for in the pre-qualification questionnaire, although it would be unfair to expect any contractor to have all insurances in place at this stage although at the pre-qualification questionnaire stage, contractors are advised of what levels are expected of them. It is important to note that the insurance protection afforded in the United Kingdom under a Public Liability policy is “standard” and as such the final decision on liability, under the terms of the insurance contract, will always be vested in the Insurer.
- 3.8** Any remedies for under-performing are specific to each contract, and in general terms whereby there is a failure in service then the contract administrator will meet with the contractor, discuss any failings and set a date for resolving any issues. If these issues are not resolved, then a warning letter is issued detailing another date for resolving the issue and if the issue is still not resolved, the Council have a right to cancel the contract.
- 3.9** Without prejudice to their own Contractual Liability to indemnify the Council under this clause the supplier shall, throughout the contract period, cause any sub-contractor or agent, to maintain the minimum insurance cover described above, for the appropriate liabilities.
- 3.10** Throughout the contract, the supplier or his sub-contractors, shall make good any damages to Council property and/or any third party property as a result of his service provision, to the satisfaction of the contract administrator. In the event of refusal or undue delay to do so, the contract administrator shall have power to order such repairs to be done by others at the supplier’s expense.
- 3.11** The supplier shall, on the commencement of the contract and thereafter upon request, supply the contract administrator with a copy of all insurance policies effected and documented evidence that such insurance policies are properly maintained.
- 3.12** The contractor shall notify the contact administrator of any serious accident or fatality, notwithstanding his obligations to the Health and Safety Executive.
- 3.13** The supplier’s liability and indemnity to the Council arising from this shall be without prejudice to any other right or remedy available to the Council. The supplier shall not be responsible, in respect of personal injury, death, damage to property or any loss whatsoever, where the cause is a deliberate or negligent act or omission of the Council or their agents.
- 3.14** The contractor/supplier’s insurances will be very closely scrutinised by the Council’s Risk and Insurance Section to ensure that covers provided comply with the requirements of the contract. In addition part of this process will identify the name, address and contact details for the insurance claims contact within the contractor/supplier or its insurer or broker.

Contractor's Insurance

- 3.15** The contractor will include any costs for obtaining all/any relevant insurance covers specified in the tender documents including inter alia Public /Products Liability Insurance cover which provides an indemnity for causing accidental death/bodily injury to third parties and/or damage to third party property, arising from the contract works, including liability arising from goods or services sold, supplied, altered or treated. In addition, it is commonly the case that contracts will include a tailored Indemnity Clause which requires the contractor/supplier to indemnify the Council against all liabilities, fines, losses, claims, demands and proceedings whatsoever arising in connection with the provision of the goods/services, or failure to provide the contract, in accordance with the conditions of the contract.
- 3.16** The insurance shall provide a minimum of £5m cover for any one event /unlimited in any one period of Indemnity, other than for Products Liability cover where the Indemnity Limit applies in the aggregate to all claims in any one period of Indemnity. For a claim to be covered the contractor or its officers must have breached its duty of care owed (been negligent) and as a direct result of said breach, the claimant must be able to prove that the pursuer suffered accidental death or bodily injury and/or property damage. Any claimant has a general duty at Common Law to mitigate the costs of his/her claim. Therefore, e.g. where property has been damaged say by the escape of water, a claimant must attempt to save the property rather than simply disposing of it. To dispose of property in such circumstances would prejudice the contractor or the Council's insurance position and would in most cases lead to insurers repudiating the claim as the client would be unable to substantiate his/her loss.
- 3.17** The supplier shall include where relevant in his costs for meeting his obligations for the provision of Employers' Liability Insurance cover in connection with the goods/service. The insurance shall comply with the Employers' Liability (Compulsory Insurance) Act, 1969, and shall provide a minimum of £10m cover.

4. METHODOLOGY

4.1 Consultation

- 4.1.1** Consultation, in the form of a questionnaire survey, was issued to the family group of authorities, and responses were received from four Councils. An analysis of the responses, including the response by East Ayrshire Council is provided at Annexation A.
- 4.1.2** Consultation, in the form of a questionnaire survey, was issued to a range of contractors and responses were received from two contractors. An analysis of the responses received is provided at Annexation B.

- 4.1.3** Consultation in the form of a questionnaire survey was issued to a range of tenants and responses were received from 14 tenants. An analysis of the responses received is provided at Annexation C.

4.2 Witnesses

- 4.2.1** On 23 August 2011, Members met with the undernoted internal witnesses with regard to the current implementation of the system.

- Chris McAleavey, Head of Housing
- Craig McArthur, Head of Finance
- Craig Young, Litigation Team Leader

4.3 Consideration of Evidence

- 4.3.1** Members of the Governance and Scrutiny Committee met on 23 August 2011 to consider all the evidence gathered and formulate conclusions and recommendations in respect of the review for subsequent presentation to Governance and Scrutiny Committee.

5. CONCLUSIONS

- 5.1** The Committee acknowledged the protocols and processes which are applied by East Ayrshire Council relative to the handling of insurance claims from tenants/residents in respect of detriment caused by a contractor's negligence in the course of carrying out operations on behalf of the Council, as referred to within Section 3 of this report. Having undertaken the review process as detailed in this report, the Committee formulated conclusions which are summarised below, and specific recommendations arising therefrom, where appropriate, are detailed in Section 8.
- 5.2** While this review focussed on insurance arrangements provided by contractors relative to the carrying out of works at Council houses under the Housing Improvement Programme, it was recognised that many of the issues raised during the review process are relevant to a range of services provided for the Council by external contractors. It is therefore considered that the intention of this report be reflected on practice across all Council services where there is potential for third party claims against contractors employed by the Council. This would include for example demand maintenance works undertaken by Housing Asset Services, Aids and Adaptations undertaken on behalf of Social Work services and Roads repair/maintenance for Roads and Transport.
- 5.3** Members recognised that, given the considerable amount of work undertaken by contractors on behalf of the Council, the number of insurance claims submitted is limited and that the level of resources directed towards this area of work should be proportionate. Nevertheless, on the basis of the evidence presented during the review, it was the case that a significant proportion of claimants encounter a greater or lesser degree of difficulty in having their claim timeously dealt with, by contractors, and for this reason and in the

interests of good practice, it is important that action is taken to improve upon the current arrangements.

5.4 Members noted that the fundamental responsibility of the Council in relation to contract works is to take reasonable steps to ensure the employment of a competent contractor and for contract supervision; and, further, that the Council's position in terms of liability relevant to insurance claims may be compromised by the pursuit of certain actions for, or on behalf of, a claimant. However, there is an expectation on the part of claimants that the Council has some responsibility in this regard, having been responsible for letting the contract, and action should be pursued to improve the currently applied protocols and procedures to ensure that the Council is better placed to facilitate the handling of insurance claims, without compromising liability. Further, it was recognised that there are a number of vulnerable tenants living in Council houses and issues around insurance, completing claim forms and dealing with contractors can be difficult and confusing. Members therefore felt that as part of the Council's role, without prejudice to the outcome of any claim, the Council should provide relevant support to assist tenants in following the appropriate course of action.

5.5 Improvements to current protocols/processes should relate to the following areas, viz:-

- Procurement/Selection - increased emphasis on contractors' claims handling processes at the pre-qualification questionnaire and tendering stages to ensure that contractors' arrangements are robust in all situations and that the Council can take effective action under the conditions/terms of the contract in response to any difficulties which may be encountered regarding the handling/settling of insurance claims arising from the contract. Commensurate with this, greater focus should be placed on pre-qualification questionnaire and tender evaluation with greater weighting on insurance claim handling arrangements within the general provisions relating to customer care, and consideration of the use of pre-contract questionnaires, references etc specifically in relation to this aspect.
- Contract Monitoring - current arrangements for contract monitoring, generally, provide a requirement for frequent and regular meetings between the contractor and the Council's contract supervisors. Consideration to be given for issues relating to insurance claim handling to be raised and discussed at these meetings as a matter of course; and, further, that consideration be given to developing the role of the designated contract Customer Liaison Officer to act as a 'gateway' for tenants in relation to insurance claims.
- Monitoring of Contractors' Claims Handling - it was considered that there is room for enhancement of the current arrangements in place for this area of activity, perhaps in relation to a requirement being placed upon contractors to notify the Council of all claims received and how these are progressed and dealt with. This would require consideration within the contract conditions and the expectation of contractors regular production of

management information. Spot-checks could also be undertaken by the Council of selected claims to ensure that these are being properly and effectively dealt with by contractors; and periodic review of a sample of complaints relating to insurance claim handling.

- Information to Tenants - Current arrangements in place for the administration of works contracts provide that a comprehensive information pack is provided to tenants in advance of the works commencing, and the opportunity should be taken to ensure that appropriate information is provided within the pack to assist the tenant should there be the need to make an insurance claim including the process and relevant contact details. It was also felt that this should include information on the existing supports available to assist vulnerable tenants.

5.6 Members accepted that the principles of Insurance claims are bound by the legal arrangements and that although the improvements outlined above would enhance the Council's procedures to support tenants and residents of East Ayrshire, through improved information, effective procurement and contract management, there remains a responsibility solely on the Contractor and their Insurance company to resolve any relevant claim.

5.7 Notwithstanding the expert advice provided by the internal witnesses to the review, any revised processes and protocols for insurance claim handling should be developed in liaison with the Council's insurer, Zurich Municipal Ltd.

5.8 Members were also aware of the work which was ongoing in pursuit of best practice to continually improve the quality of work, standards of conduct and practice on the part of contractors carrying out work for the Council and that it could reasonably be expected that this in itself will lead to potential for reduction in the number of insurance claims which require to be submitted by tenants.

6. RECOMMENDATIONS

6.1 Having considered all of the information and evidence gathered during the review, the recommendations of the Governance and Scrutiny Committee are as follows, namely:-

- (i) that the Head of Legal, Procurement and Regulatory Services consider incorporating within pre-qualification questionnaire or contract evaluation previous performance of claims handling by contractors, where appropriate;
- (ii) that the Head of Legal, Procurement and Regulatory Services consider within contract conditions, further explicit requirements being identified in relation to ongoing performance of claims handling focussing on improving contract management, including ensuring claims handling is explicitly identified as a Performance Indicator within contract

monitoring and progress on current claims is regularly raised at contractor meetings;

- (iii) that the Head of Housing ensures that as part of communication prior to work starting, there is improved clarity, within an information pack, for tenants regarding claims handling and that any issues in the first instance should be raised with the Contract Administrator, who should be able to direct claimants on the process and available support;
- (iv) that a review be undertaken and action progressed appropriately, of the need for training on insurance claim procedures for Council staff dealing with tenants and contract administration to ensure awareness of responsibilities and assistance which the Council can provide;
- (v) that revisions to current processes and protocols for insurance claim handling be developed in liaison with Zurich Municipal Ltd, as appropriate and required, and be reported back to the Governance and Scrutiny Committee in due course; and
- (vi) that future reports be presented to the Governance and Scrutiny Committee on an annual basis to update as to the effectiveness of the new arrangements.

LY/SN/AK/FM

November 2011

ANNEXATION A

GOVERNANCE AND SCRUTINY REVIEW

INSURANCE ARRANGEMENTS FOR CONTRACTORS CARRYING OUT WORK ON BEHALF OF THE COUNCIL

COUNCIL RESPONSES- 4 COUNCILS RESPONDED FROM 6 QUESTIONNAIRES ISSUED

- 1. What guidance is given if any to tenants in advance of such works commencing as regards claims handling protocols?**

East Ayrshire Council

Housing

No guidance would be given in relation to claims – this may instigate claims. Claims would be dealt with if they arise, however the telephone number for the Customer Support Section would be provided on correspondence sent to tenants prior to contracts commencing.

North Ayrshire Council

Before any work is carried out in a tenant's home they are visited by a Customer Liaison Officer who leave a Major Work Information Pack, which contains a section explaining the Claims Procedure.

Clackmannanshire Council

No specific written information is given to Tenant's albeit the leaflets issued to tenants prior to the commencement of contracts advise that any complaints can be addressed to Housing's Contract Liaison Officer. Where Tenants' meetings are held, they are advised that contractors will move articles such as fridges etc and will take sufficient care in doing so, but are also advised that minor cosmetic damage may occur. If the contractor has negligently damaged their property, then a claim should be made to the contractor directly along with any necessary evidence. We also advise them that such claims are purely a matter for the tenant and the contractor

East Renfrewshire Council

Guidance to tenants in advance of works as per letter attached as Appendix 4.

- 2. Are such claims always directed to the Contractors insurer by the claimant in the first instance?**

East Ayrshire Council

Housing

Claim forms (Appendix 1) are generally returned to Customer Support Section and logged in Respond and forwarded to Private Contractor with a 14 day

deadline in which to investigate and respond to claimant. When a claim form relates to HAS contract work, they are logged with the Insurance Section and then referred to Supervisor to investigate and compile Supervisors Report which would then be forwarded to the Insurance Section with any supporting documentation.

If the claim exceeds £500 or is relating to personal injury, then the claim details would be passed immediately to the Insurance Section so that they can ensure the Council's insurers, Zurich are made aware of the impending claim. The claim forms have now been changed to make potential claimants aware that, if they have their own household insurance policy, then they may wish to make a claim on their own policy to minimise any delay in resolving the matter. This would mean that if the claimant's insurance company deemed the Council / Contractor liable then they could pursue them for recovery of their outlays.

Risk and Insurance Section

The claimant is directed to the external contractor in the first instance. Each external contractor will deal with claims differently. Their insurer may expect the contractor to deal with all property damage claims which fall within their policy excess and anything over the excess would be sent to their insurer while others may send all their claims to an insurer. It is possible that some contractors may have an arrangement where all their claims are handled by a Loss Adjuster and the contractor would pay them a handling fee per claim. It is expected that at some point the external Contractor's insurer would audit any claims that were dealt with in-house by the contractor. It is therefore impossible to say whether or not all such claims are directed to the external Contractor's insurer.

Occasionally, if there are problems with the claimant or the external Contractor refuses to deal with the tenant the Council has submitted the claim to our insurers, Zurich Municipal. In these cases the insurer writes to the claimant advising that their claim is against the external Contractor and they should pursue matters against the Contractor. If a claim falls within our policy excess the claim is not referred to Zurich but is dealt with in-house, the council do exactly the same as our insurer – write to the claimant advising that the claim is against the external contractor.

Where a claim is against the Council – Housing Asset Services (as contractor) then if the claim exceeds £500 and or involves personal injury the claim is referred to the Council's insurer, Zurich Municipal. If quantum is under £500 then the claim is dealt with in-house by the Insurance Section.

North Ayrshire Council

Tenants are asked to submit all claims in writing to the Council. We would then acknowledge this to the Tenant advising them that they should expect to hear from the Contractor within 28 days. We would then forward a copy of the tenant's claim letter to the Contractor asking them to investigate and inform

our office and the tenant of the outcome in writing within 4 weeks. We would also ask our Clerk of Works to write a report on the claim.

Where the Insurance Section receives a claim directly it will be investigated in line with the Council's insurance procedures and the claimant is contacted by letter. Where liability rests with the contractor the procedure above will be followed.

Clackmannanshire Council

As noted we would expect the claim to be addressed direct to the contractor and he would then assess the need to refer it to his insurer. Our experience is that contractors will normally settle small scale claims direct without recourse to insurers. It is the Contractor's responsibility to issue claims forms etc if he declines to deal with this direct.

East Renfrewshire Council

Claims directed to the contractor would come direct from the tenant or in some cases the Clerk of Works.

3. **Does the Council have any monitoring role in respect of such claims? Does it retain an interest in the outcome of any one claim? If so, by what means is this achieved? (e.g. is there a contract condition requiring contractors to update the Council for example where a client is clearly dissatisfied with progress/ the decision on liability?)**

East Ayrshire Council

Housing

All claims are logged in Respond and tasks are set so that they can be monitored i.e. deadlines for Contractors' responding to claimants/Supervisors compiling reports. Customer Support Section would be notified by Contractor whether the claim has been settled or repudiated. If informed that the claim has been settled we would request evidence i.e. disclaimer form signed by claimant. If confirmation was not provided then we would contact claimant directly to ensure that the claim had been settled. Contractors are always advised to get the disclaimer form signed by claimant when making settlement.

When a claim is sent to the Insurance it is no longer monitored by Customer Support Section, however any updates received from Insurance Section/Zurich are noted in the system. This is because the claims process can be lengthy.

On the guidance notes (included in Appendix 1) which accompany the claim forms, there is a section called 'Right to Appeal' to assist claimants if they wish to appeal against the outcome of their claim.

North Ayrshire Council

Where liability for a claim rests with the contractor it is for the contractor to manage that claim appropriately and in line with their own procedures. In terms of the contract outstanding claims are brought up at the monthly meeting between the Contractor and the Contract Supervisor.

Clackmannanshire Council

There are no Employer's requirements in the tender documents which set out specific actions on the part of contractors. Tenants however can raise any outstanding claims with the Housing Officer and these will be monitored at the regular meetings between the Housing Officer and Project Architect. Individual claims may then be raised with the contractor, but generally only on a case by case basis.

East Renfrewshire Council

There is no monitoring role by the Council towards claims made by tenants to the Contractor.

4. **In the event that a client commented that he/she did not care who the contractor was, as it was the Council's contract and the Council should simply pay for the damage the contractor caused. What stance would your Council adopt? What stance would your Public/Products Liability Insurer adopt?**

East Ayrshire Council

Housing

The claims procedure would be explained to claimant and we would inform them that the claim would have to go to the Contractor in the first instance in which to investigate and respond. We would also take advice from the Insurance Section on this.

Risk and Insurance Section

Where the loss or damage has been caused by a contractor then the claim would be referred to whoever the contractor was at the time of the incident. They are a separate legal entity from the Council and are required to carry their own insurance cover for such eventualities. The Council's insurer would adopt the same stance, the negligent act or omission was caused by operatives of the contractor and therefore they would redirect the tenant to make a claim against whoever the contractor was at the time.

North Ayrshire Council

Where an incident is caused by negligent actions or omissions of a contractor the claim will be passed to the contractor. The contractor is a separate legal entity and is required to maintain adequate insurance. All subcontractors are required to have £5M public liability cover and there is a clause in the tender

document that states any damage would have to be made good by the contractor. Further insurance requirements are outlined within the PQQ documentation.

In relation to the Council's insurers they will only consider claim where liability rests with the authority.

Clackmannanshire Council

Generally our stance is that it continues to be a matter for the tenant and the contractor as it is the tenant's personal property that has been damaged and there is need for him to prove that the damage actually occurred. In extreme cases we have paid tenant's claims direct and contra-charged the contractor. This however is only done when the contractor has refused to deal with the matter and has ignored any correspondence from the Council. It has rarely been necessary to take such action.

East Renfrewshire Council

Any damage caused by the contractor is their responsibility regardless on any comment by the tenant otherwise.

5. **In selecting the contractor for e.g. works involving contractors engaged by Housing Services to replace e.g. windows/doors/central heating systems/kitchens/bathrooms, what specific terms/conditions would you include in the contract tender documentation or in the PQQ relating to the handling of client's Public/Products Liability Claims and contractually what remedies have you included, if any for under-performance?**

East Ayrshire Council

Housing and Procurement

1. Regarding Public/Product Liability claim. All contractors must have minimum £5m Public Liability and must complete the Council's Insurance Questionnaire (Appendix 2). If they don't then any bid would be non compliant.
2. With respect to info being included in the PQQ – this is not really relevant to any contract. Although the PQQ will ask for info re these insurances it would not rule anyone out at that stage. It would be unfair to expect a firm to have all the insurances in place and they might not even win a tender, as long as they commit to increasing their levels of insurance should they be successful then there is no problem. At the PQQ stage they would know what levels are expected but the insurance questionnaire does not get completed until the tender stage.
3. Remedies for under-performing will be specific to each contract. There are general terms whereby if there is a failure in service then the CA should have the contractor in, discuss failings, set a date for resolving,

if it is not resolved, then a warning letter would be issued with another set period of time and if not resolved then we will have a right to terminate the contract. Some contracts use a points system for failings. We have included a performance matrix for the new kitchen/bathroom installs (Appendix 3), but this is new and it is for a Framework contract with mini tenders. The following clauses were included in the last door contract relating to performance and remedies, but these are dependent on the CA monitoring closely and having the meetings and issuing the letters.

H1 FAILURE IN PERFORMANCE

H1.1 The Supplier shall be required to perform the service to the agreed standards and programme. Failure to perform the contract to the standards or programme will result in the Contract Administrator applying the provisions of this Clause.

H1.2. At any time after the commencement of the contract, the Contract Administrator may investigate each case where the Supplier has failed to perform or provide the agreed service.

H1.3 A monitoring system will be operated by the Council and the Supplier and will address the following elements:

- a) to ensure the service maintains the agreed standards, programme and Specification.
- b) to ensure continuous customer satisfaction.

H1.4 In the event that the Supplier fails to meet the requirements and obligations detailed in clauses H1.1–H1.3, the Contract Administrator will:

- a. Instruct the Supplier to attend a meeting with the Contract Administrator to explain the causes of the failures and propose remedial action to rectify the failure and eliminate future occurrences.
- b. If the failures are not resolved within a previously agreed timescale, then an official letter will be issued recording the details of the failures and that the failures must be resolved within **14 days**.
- c. If the failures are not resolved within 14 days then a further letter will be issued to formally invoke termination procedures.
- d. instruct a third party to carry out the work where the Supplier has failed, or is unable to meet the contract standards or programme.

H1.5 If the Contract Administrator deems necessary, the Council may recover all additional costs incurred by the Supplier's failures. These costs shall include, but are not exclusive to, the employment of alternative Suppliers, administrative costs and additional working time/overtime costs.

H2 TERMINATION

H2.1 The Council may terminate the contract if the Supplier is guilty of any of the undernoted events. Upon such termination, the Council may enter into another contract with other firms or persons. All losses, expenses, costs and charges incurred by the Council in this connection shall be deducted from any outstanding monies held by the Council or may be recoverable by legal action.

- a. failure to begin or perform the service required by the Contract
- b. failure to continually perform the service in accordance to the agreed programme, Conditions of Contract, Specification or acceptable levels of customer satisfaction.
- c. committing a serious breach of any of the requirements of the contract, especially in areas of Health and Safety obligations.
- d. failure to achieve the performance detailed in Clause H1.
- e. suspending payment to, or convening a meeting of, creditors; becoming bankrupt; having a receiver appointed by any debenture holder or having an administrator appointed pursuant to the Insolvency Act, 1986; going into liquidation (other than for the purpose of amalgamation or reconstruction) with his creditors, or any arrangements for the benefit of his creditors; having any judgement against him which remains unsatisfied for more than 14 days.
- f. submitting untrue, incorrect or invalid representations, accounts or reports referred to in the contract documents, or failing to meet the required timescales for the submission of accounts, records and resultant payments to the Council.
- g. found to have taken part in collusive or corrupted practices.

H2.2 Remedies

In any such circumstances the Council may without prejudice to any other remedies under the Contract and without prejudice to any rights of action which shall accrue or have accrued to the Council, do all, or any, of the following:-

H2.2.1 suspend all payments due to the Supplier;

H2.2.2 retain any amount due to the Supplier whatsoever, arising from the service;

H2.2.3 terminate the Supplier's contract, in writing, giving **28 days notice**. Such notice to be delivered by hand or sent by first class recorded delivery post to the Supplier's address in the Form of Tender and be deemed to have been received within **48 hours** of posting. At the expiration of **28 days** after delivery of such notice, the contract, so far as regards any service to be supplied under the contract, shall be terminated.

H2.3 Within **28 days** of receipt of the notice, upon termination and unless requested otherwise by the Council, the Supplier shall :

- a. cease to perform the contract;
- b. fully and promptly indemnify the Council against all loss and damage suffered by reason of such termination.
- c. be liable for all losses and expense incurred by the Council should the Supplier fail to meet any of his obligations under the contract.

H2.4 Upon such termination, the Council may enter into an alternative contract with other suppliers. All losses, expenses, costs and charges incurred by the Council in this connection shall be deducted from any outstanding monies held by the Council or may be recoverable by legal action.

G1 **LIABILITY, INDEMNITY AND INSURANCE**

G1.1 The Supplier shall include in his costs for obtaining **Public Liability** insurance cover for indemnifying the Council against all liabilities, fines, losses, claims, demands and proceedings whatsoever, arising in connection with the provision of the goods/service, or failure to provide the contract, in accordance with these conditions. The insurance shall provide a minimum of **£5,000,000 (Five Million Pounds Sterling)** cover for any one separate incident, whether injury or damage to persons or to property. The policy must include Products Liability cover for an Indemnity limit of at least £5m any one event/in the aggregate any one period of insurance

G1.2 The Supplier shall include in his costs for meeting his obligations for the provision of **Employer's Liability** insurance cover in connection with the goods/service. The insurance shall comply with the Employers Liability (Compulsory Insurance) Act, 1969, and shall provide a minimum of **£10,000,000 (Ten Million Pounds Sterling)** cover. The Supplier shall indemnify the Council against all liabilities, fines, losses, claims, demands and proceedings whatsoever in this respect.

G1.4 The Supplier shall be responsible for obtaining “Goods in Transit” insurance cover for indemnifying the Council against any liabilities, fines, losses, claims, demands and proceedings whatsoever, arising in connection with the loading, transportation, delivery and unloading of the goods to be supplied. The extent of the cover will be at the Supplier’s discretion, dependent upon the size and value of individual shipments, however, such cover shall adequately account for:

- i) the goods being transported on an “all risks” basis, for their full replacement value.
- ii) the unloading, and loading, especially if ‘transfer’ of loads on site is required and shall be included on an “all risks” basis, for their full replacement value.

The insurance shall provide cover for each separate incident. Any Consequential Loss cover shall be clearly stated.

G1.4 Without prejudice to his own liability to indemnify the Council under this Clause, the Supplier shall, throughout the Contract Period, cause any sub-contractor or agent, to maintain the minimum insurance covers described in G1.1 to G1.3, for the appropriate liabilities.

G1.5 Throughout the contract, the Supplier, or his sub-contractors, shall make good any damages to Council property, as a result of his service provision, to the satisfaction of the Contract Administrator. In the event of refusal or undue delay to do so, the Contract Administrator shall have power to order such repairs to be done by others at the Supplier’s expense.

G1.6 The Supplier shall, on the commencement of the contract and thereafter upon request, supply to the Contract Administrator, a copy of all insurance policies effected and documentary evidence that such insurance policies are properly maintained.

G1.7 The Supplier shall notify the Contract Administrator of any serious accident or fatality, notwithstanding his obligations to the Health and Safety Executive.

G1.8 The Supplier’s liability and indemnity to the Council arising from this Clause shall be without prejudice to any other right or remedy available to the Council. The Supplier shall not be responsible, in respect of personal injury, death, damage to property or any loss whatsoever, where the cause is a deliberate or negligent act or omission of the Council or their agents.

North Ayrshire Council

An example from the Terms and conditions for the Provision of a Services has been outlined below

LIABILITIES

Liability, Indemnity and Insurance

The Service Provider shall include in his tender the costs of obtaining and maintaining insurance cover to indemnify the Council against all liabilities, losses, claims, demands and proceedings whatsoever, from whoever, arising as a result of its failure to provide the service in accordance with these conditions. The minimum insurance cover that is acceptable shall be as stated within the Insurance Questionnaire contained in the Certificates to the Contract section of this document.

Without prejudice to his liability to indemnify The Council under this Clause, the Service Provider shall, throughout the Contract Period, cause any agent or sub-contractor to maintain such insurance as is necessary to cover any liability arising under this Clause and shall submit to the Council such evidence of such insurance as the Council may require .

The Service Provider shall be liable for any damage to property or any injury to any person(s) arising through or in consequence of their operations. The Service Provider shall free The Council from any reasonable expense The Council may incur and from any claim made upon any or all of them in connection with the performance of the duties associated with this Contract.

The Service Provider's liability and indemnity to The Council arising from this clause shall be without prejudice to any other right or remedy available to The Council.

The Service Provider shall not be responsible in respect of personal injury, death, damage to property or any loss whatsoever, where the cause is a deliberate or negligent act or omission of The Council or their agents.

The Service Provider shall, on the commencement of the Contract, and thereafter upon request, supply to the Contract Administrator a copy of certificates of all insurance policies and / or schedules required in terms of this Contract and documentary evidence that such insurance policies are properly maintained, and shall formally advise the Contract Administrator of any changes to the policy during the contract term.

The Service Provider shall notify the Contract Administrator of any "reportable" accident, or fatality, or incident of ill-health involving any of the Provider's employees while engaged upon this contract, notwithstanding the Service Provider's own reporting obligations under the requirements of the Reporting of

Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR).

For the avoidance of doubt nothing in this Contract shall render the Provider liable for any matter which occurs as a direct result of negligence on the part of The Council or their employees.

Appendix 5 outlines the PQQ requirements for the authority.

Specific clauses included within the tender document are as indicated below:

The conditions of the Measured Term Contract (MTC / Scot) (incorporating SBCC Amendment issued October 2007 – CDM Regulations) 2006 Edition issued October 2007.

(Clauses 6.4.1.2, 6.9 & 6.11)

No specific remedies are included contractually for under-performance in handling claims.

Clackmannanshire Council

We do not cover these matters in either the PQQ or tender documents. The Council, however has set KPIs which are assessed on a regular basis, especially as part of the post contract evaluation. The same process also seeks comments from the tenants on the performance not only of the contractor but also the services provided by the Council. Poor performance by the contractor in respect of insurance claims would be taken into account, but is not a KPI in its own right. As we have moved over to multi-year contracts with possible extensions, poor performance as identified by low KPI scores would mean that the extension is not awarded.

East Renfrewshire Council

Within the tender the JCT Standard Form Of Contract is used and the subsequent insurance clauses within. (Appendix 6). No notes are given to the tenant on how to progress a claim and any subsequent claims from works are registered via the Clerk of Works or directly with the Contractor.

6. **Are there any other “best practice” initiatives which you would be willing to share which would potentially would remove the thorny issue of clients being dissatisfied with the performance of a contractor or its insurer in their handling of a Public Liability Claim?**

East Ayrshire Council

Housing

H.A.S. has introduced a Performance Monitoring Report completed at each progress meeting by the Contract Administrator which is based on the contractor's performance during the period between each meeting, normally

two weeks. If the contractor has not met the required level of performance they will be warned that they will not be allowed to tender for future contracts if their performance does not improve. However this does not include the contractor's handling of Public Liability Claims.

Risk and Insurance Section

Perhaps taking photographs before work begins, noting any pre existing damage to items and obtaining 'sign off' by the tenants and then repeating the process once the work has been done would assist with evidencing any potential claim or otherwise.

North Ayrshire Council

The Performance Indicators and Monitoring System used in all the Term Contracts is a system that monitors the contractors performance and has a section that scores the contractors performance in relation to claims. The customer satisfaction survey also targets contractor performance with regard to claims

There are circumstances where the insurance section, and other services will look to inform individuals of how to progress claims. In doing this the Council needs to ensure it doesn't expose itself.

Clackmannanshire Council

Not really, but we would be keen to see details of good practice that comes out of your investigations.

East Renfrewshire Council

The Council aim within any contract is that the Contractor progresses any claim for injury/damage by a third party speedily & efficiently.

7. **Do you offer any advocacy services to claimants who may require assistance in completing a claim form or help in understanding the protocols?**

East Ayrshire Council

Housing

On the front of the guidance notes (included in Appendix 1) there is a section that states' **This document is also available, on request, in Braille, large print or recorded on to tape, and can be translated into your language on request**'. Should any potential claimant, require assistance in completing the form then we would direct them to Housing Office of CAB. If it was easier for the potential claimant, then the form could be sent by e-mail and returned by e-mail. If a potential claimant turned up at the office, then we would assist in completing form.

Risk and Insurance Section

No but I understand that the Citizens Advice Bureau may be able to assist residents with form filling and advice in relation to a variety of issues including legal matters, money advice and other problems.

North Ayrshire Council

The Council have Clerk of Works and Customer Liaison Officers who assist tenants to understand the protocols and advise on the claims procedure.

The insurance section can informally discuss the purpose of a claim form and where we're contacted by the claimant we would offer what assistance we can without being able to offer any formal advice etc.

Clackmannanshire Council

The Housing Officer will offer assistance with making claims to contractors or their insurers.

East Renfrewshire Council

If requested the Insurance Section would advise tenants to contact the contractor and what information they would require to forward.

West Lothian Council's response (Attached as Appendix 7)

EAST AYRSHIRE COUNCILDEPARTMENT OF NEIGHBOURHOOD SERVICESHOUSING ASSET SERVICESPUBLIC LIABILITY INCIDENT REPORT – PART A

This document is also available, on request, in Braille, large print or recorded on to tape, and can be translated into your language on request.

Tha an sgrìobhainn seo ri faotainn cuideachd, ma iarrar a leithid, ann an clò nan dall, sa chlàr mhòr no air a clàradh air teip, agus faodar a cur dhan chànan agaibh fhèin ma dh'iarras sibh.

Dokument dostępny jest również w alfabecie Braille'a, w wersji z powiększonym drukiem lub w formie nagrania dźwiękowego na kasecie. Na życzenie oferujemy także tłumaczenie dokumentu na wybrany język.

ਮੰਗ ਕਰਨ ਤੇ, ਇਹ ਦਸਤਾਵੇਜ਼ ਬੋਲ, ਵੱਡੀ ਛਪਾਈ ਜਾਂ ਟੇਪ ਉੱਪਰ ਰਿਕਾਰਡ ਕੀਤਾ ਹੋਇਆ ਵੀ ਮਿਲ ਸਕਦਾ ਹੈ, ਅਤੇ ਬੋਲਤੀ ਕਰਨ ਤੇ ਡੂੰਘਾਈ ਭਾਸ਼ਾ ਵਿਚ ਵੀ ਇਸ ਦਾ ਅਨੁਵਾਦ ਕੀਤਾ ਜਾ ਸਕਦਾ ਹੈ।

本文件也可按要求提供凸字、特大字體、錄音帶或中文版本。

درخواست کرنے پر یہ دستاویز بریل، بڑی طباعت یا میپ پر ریکارڈ شدہ آواز کی صورت میں بھی دستیاب ہے، اور درخواست کرنے پر آپ کی پسندیدہ زبان میں اس کا ترجمہ کروایا جاسکتا ہے۔

PUBLIC LIABILITY INCIDENT REPORT – PART A

DEPARTMENT OF NEIGHBOURHOOD SERVICES

HOUSING ASSET SERVICES

NOTES ON COMPLETING THIS FORM:-

Please note that information given on claim forms may be used for the purposes of preventing or detecting fraud by sharing and cross matching with other bodies. For more details see under **NATIONAL FRAUD INITIATIVE** on our website www.east-ayrshire.gov.uk/finance

1. Any alleged loss that is found to have been fraudulently intimated, falsely stated or exaggerated will be subject of criminal prosecution.
2. The form must be completed in full and signed and dated by you as being a true representation of the circumstances surrounding the background to the loss. Submission of the form does not constitute acceptance of a claim.
3. Upon submission of the Incident Report Form – Part B, the Council will investigate the loss circumstances fully, and will write to you with its findings.
4. In the event that you elect to pursue a claim against the Council/Its Insurers, the onus of proof of negligence rests with you. Under the “Description of the incident” you should state clearly why you consider the Council to be legally liable for your loss. You will be notified in writing should the incident form be passed to the Council’s Insurers for consideration as a claim under existing Public Liability insurance arrangements.
5. The ultimate decisions regarding the liability, or otherwise of the Council rests with the Council/its Insurers. In relation to claims that have been intimated to Insurers no further contact should be made with the Council. Any further communication should be directly with the Council’s Insurers, who will already have acknowledged their interest to you. You may contact them by telephone or in person at the address/number quoted in their correspondence. In respect of losses that are being administered by the Council, you will receive an acknowledgement of the form, initially. Following investigation into the incident a formal view on liability will be conveyed to you.
6. It is also your responsibility to quantify the value of your loss. Therefore, two written estimates will be required, for the repair or replacement of damaged property as well as an indication of the original purchase price and date of purchase.
7. Should you proceed with repair or replacement prior to the Council/its Insurers having had the opportunity to fully investigate the position on liability, your claim may be prejudiced.
8. Damaged property should be retained for inspection by the Council and must not be disposed of without the prior agreement of the Council and/its insurers. Contact the relevant Housing Department who will endeavour to inspect the damaged items within seven days. Please note that your claim may be prejudiced should you dispose of the damaged property without it being inspected.
9. The Council and its Insurers have a right to recover any salvage eg damaged fridge or cooker etc and no property should be disposed of without obtaining prior agreement from the Council. The decision to replace damaged goods, prior to full consideration of the loss rests entirely with you.

10. Where décor has been damaged and if liability is accepted by the Council then you are legally entitled to be placed back in the position you were in prior to damage occurring. i.e. if the damage to décor occurred on one wall of a room and you intimate a claim for redecoration of all four walls then the Council is only responsible for meeting the costs of the one damaged wall subject to wear, tear and depreciation.

Losses which are caused by sudden/accidental and or unforeseeable means such as bursting or overflowing of water apparatus will generally not be accepted, as long as there has been no fault on the Council. Essentially such losses are out-with the reasonable control of the Council. Tenants are encouraged to effect their own contents insurance protection.

NOTE: Council policy does not exclude liability for accidental damage to other property caused by the negligent act(s) of a Council employee as a result of effecting repairs.

11. Criminal Loss or Damage - Generally, claims will be accepted if negligence can be proven and no claim will be met where the circumstances of the loss involve the criminal act(s) of an unidentified third party. Eg theft of property - Such matters should be referred to the tenants own insurers.
12. Mitigation of Loss – You have a duty to take all reasonable steps to reduce the value/extent of any loss and to ensure as far as possible your property does not become damaged.
13. Where the alleged negligent act has been committed by an appointed contractor to the Council, then the incident report will be re-directed to the contractor/its Insurers.
14. Council Tax Arrears - Any claimant whose incident report form is to be considered as a possible insurance claim will be given the opportunity to offset any outstanding Council Tax Arrears against the value of the claim.
15. Where a claim is accepted you will be asked to sign a discharge form prior to any settlement cheque being released. Such losses will be settled on an Indemnity basis i.e. a deduction is made for wear, tear and depreciation. NB: Claims are not settled on a 'new' for 'old' basis.
16. Should you intend to pursue an insurance claim, you should be aware that the Law of Negligence will be used to determine liability. In the event of liability being disputed, by either the claimant or the Insurers to the Council, formal commencement of legal proceedings may ensue.
17. In general terms, if you have your own household insurance then the matter can be resolved fairly quickly by intimating a claim against your own household insurance. Your Insurers will settle the claim with you and, if they believe that the Council has been negligent in any way, they can exercise their right of subrogation, seeking to recover their outlays from the Council. If they decide to pursue matters against the Council you can request that they include your policy excess in any recovery action they may undertake.

18. RIGHT TO APPEAL

Claims within the Council's Policy excess dealt with by East Ayrshire Council

In the event that you are unhappy with the outcome of your claim, you can appeal in writing providing further evidence in support of your claim. This information will be subject to an independent review with a response made to you in writing as soon as our investigations are complete. If after an appeal you are still unhappy with the decision then you may wish to seek legal advice at your own expense or consult the Citizens Advice Bureau.

Claims where quantum exceeds the value of the Council's Policy excess are dealt with by Zurich Municipal

In the event that you are unhappy with the outcome of your claim handled by the Council's insurer then you must direct all enquiries to them.

Under the terms of the Council's insurance contract, the Council / its officers and its Elected Members are precluded from entering into negotiations with the Third Party regarding liability and / or quantum.

**** THE INCIDENT FORM WHEN COMPLETED, SHOULD BE RETURNED TO OFFICE WHO ISSUED THE FORM.**



EAST AYRSHIRE COUNCIL
PUBLIC LIABILITY INCIDENT REPORT FORM – PART B

IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THE GUIDANCE NOTES BEFORE COMPLETING THE FORM. THEY ARE PROVIDED TO HELP YOU COMPLETE THE FORM CORRECTLY TO HELP AVOID UNNECESSARY DELAYS

EAST AYRSHIRE COUNCIL DOES NOT ADMIT LIABILITY BY THE ISSUE OF THIS FORM

If you have Household Contents Insurance, you may wish to investigate the possibility of making a claim against your household policy. Provided the event/incident is covered under the terms of your policy then, generally, this would minimise any delay in resolving the matter. Your insurer would settle the claim directly with you and, where they consider that the Council / the Council's Contractor has been negligent, they could then pursue recovery of their outlays against East Ayrshire Council / the Contractor. This is called exercising their right of subrogation. You could ask your insurer if it would consider including your policy excess (if applicable) in any recovery action they undertake. Please note that in law you cannot claim twice for the same item (double indemnity) Where more than one insurer insures the same subject matter against the same insured event, Insurers operate claims sharing agreements and are readily able to exchange information, to establish the extent to which each is proportionately liable to meet the given loss.

SECTION 1: CLAIMANT DETAILS

Name:

Date of Birth:

National Insurance No:

House No:

Street:

Town:

Postcode:

Tel. No:

Occupation:

Are you a owner/occupier or council tenant (tick as appropriate)

Council Tenant ☐
Owner/Occupier ☐

SECTION 2: DESCRIPTION OF THE INCIDENT THAT LED TO THE LOSS OR INJURY (if claiming for personal injury, section 2B must be completed in addition to the rest of the form):

Date:

Time:

Location:

DESCRIPTION OF LOSS: (please continue over page if necessary) Please include photographs were available or confirm if damaged property is available for inspection). Where décor has been damaged please also indicate the approximate date of when the area was last decorated prior to damage occurring.

SECTION 2: DESCRIPTION OF THE INCIDENT THAT LED TO THE LOSS OR INJURY (CONTINUED).

SECTION 2A: PLEASE PROVIDE DETAILS OF PROPERTY WHICH HAS BEEN DAMAGED (Please enclose 2 replacement estimates & original purchase receipt(s) where appropriate)

NB: If the item(s) have been disposed of or you have redecorated and no-one from the Council has had an opportunity to view / inspect the damaged item(s) / area then you have prejudiced your position as you will not be able to prove your loss, as per Point 8 on the accompanying Notes.

| Description of Items | Date of Purchase | Purchase Price |
|----------------------|------------------|----------------|
| | | |
| | | |
| | | |
| | | |

SECTION 2B: PLEASE PROVIDE DETAILS OF INJURIES SUSTAINED

Did you attend a doctor?

Yes ☐

No ☐

If Yes, please state when?

Date:

Time:

Did you attend hospital?

Yes ☐

No ☐

Names & Address of hospital attended

.....

If Yes, please state when?

Date:

Time:

SECTION 3: WHY DO YOU CONSIDER THE COUNCIL TO HAVE BEEN NEGLIGENT?

SECTION 4: PLEASE PROVIDE A SKETCH OF THE EXACT LOCATION OF THE INCIDENT IF INCIDENT OCCURRED OUTWITH YOUR HOME/ COUNCIL BUILDING. PLEASE NOTE THAT FAILURE TO PROVIDE A SKETCH MAY RESULT IN DELAYS IN PROCESSING YOUR CLAIM:

SECTION 5: INDEPENDENT WITNESSES

Was the incident witnessed?

Yes ☐

No ☐

(If yes, please complete the following details):

| | |
|----------|----------|
| Name: | Name: |
| Address: | Address: |
| | |

SECTION 6: DECLARATION

Please note any claim, which is found to have been fraudulently intimated or exaggerated, will be the subject of criminal prosecution.

I certify that, to the best of my knowledge and belief, the above details are true and correct in every respect.

I confirm that I have read, understood and accept the terms and conditions contained within the guidance note.

Signature: Date:

Accessibility Statement

This document is also available, on request, in Braille, large print or recorded on to tape, and can be translated into your language on request.

Tha an sgriobhainn seo ri faotainn cuideachd, ma iarrar a leithid, ann an clò nan dall, sa chlàr mòr no air a clàradh air teip, agus faodar a cur dhan chànan agaibh fhèin ma dh'iarras sibh.

Dokument dostępny jest również w alfabecie Braille'a, w wersji z powiększonym drukiem lub w formie nagrania dźwiękowego na kasecie. Na życzenie oferujemy także tłumaczenie dokumentu na wybrany język.

ਮੇਰਾ ਕਰਨ ਤੇ, ਇਹ ਦਸਤਾਵੇਜ਼ ਬ੍ਰੇਲ, ਵੱਡੀ ਛਪਾਈ ਜਾਂ ਟੇਪ ਉੱਪਰ ਰਿਕਾਰਡ ਕੀਤਾ ਹੋਇਆ ਵੀ ਮਿਲ ਸਕਦਾ ਹੈ, ਅਤੇ ਬੋਲਤੀ ਕਰਨ ਤੇ ਭੁਲਾਤੀ ਭਾਸ਼ਾ ਵਿੱਚ ਵੀ ਇਸ ਦਾ ਅਨੁਵਾਦ ਕੀਤਾ ਜਾ ਸਕਦਾ ਹੈ।

本文件也可按要求提供凸字、特大字體、錄音帶或中文版本。

CHECKLIST

Please ensure you have included all relevant information with your claim form. The list below will help you.

| | YES | NO |
|---|--------------------------|--------------------------|
| CLAIM FORM COMPLETED | <input type="checkbox"/> | <input type="checkbox"/> |
| FORM SIGNED & DATED | <input type="checkbox"/> | <input type="checkbox"/> |
| COPY OF ORIGINAL PURCHASE RECEIPT(S) ENCLOSED (If applicable) | <input type="checkbox"/> | <input type="checkbox"/> |
| IF NO ORIGINAL RECEIPTS DETAIL THE APPROXIMATE AGE OF ITEM(S) | <input type="checkbox"/> | <input type="checkbox"/> |
| FOR CLAIMS RELATING TO DAMAGE TO DÉCOR ADVISE WHEN AREA WAS LAST DECORATED PRIOR TO DAMAGE OCCURING | <input type="checkbox"/> | <input type="checkbox"/> |
| ENCLOSED 2 ESTIMATES FOR REPLACEMENT ITEM(S) / REPAIR OF DAMAGED ITEM(S) | <input type="checkbox"/> | <input type="checkbox"/> |
| PHOTGRAPHS ENCLOSED (If applicable) | <input type="checkbox"/> | <input type="checkbox"/> |
| DETAILS OF INDEPENDENT WITNESSES NOTED ON FORM (If applicable) | <input type="checkbox"/> | <input type="checkbox"/> |

CONTRACTORS INSURANCE QUESTIONNAIRE

(This Form must be completed by the Insurer or Broker to the Contractor)

Insured: _____

Address: _____

Contract Name: _____

DESCRIPTION OF THE "WORKS"/NATURE OF CONTRACT

- 1. Public Liability** (N.B. A minimum Indemnity limit of £5M any one occurrence is required. The highest single injury award in the United Kingdom is currently £4.37M)

(a) Name of Insurer: _____

(b) Policy Number: _____

(c) Expiry Date: _____

(d) Limit of Liability Any One Accident: _____

Is this limit reduced for any specific risks?.....YES/NO

If so, give details _____

(e) Is Product Liability included? YES/NO

If not, please explain why _____

(f) Does the Policy cover:

1. Indemnity to Principal _____

The interest of East Ayrshire Council must be noted as Joint Insured

2. Contractual Liability _____

(g) Detail exclusions that would apply to any work being performed in your capacity as Contractor to East Ayrshire Council – (Detail any policy excess applying)

(h) Does cover extend to include 21.2.1 Liability..... YES/NO

This relates to JCT 1980 or equivalent conditions applied to contracts

Involving piling, removal of load bearing walls, shoring up. Please identify the extent

Of insurance protection afforded in respect of "non – negligent damage" arising

From piling operations.

.....
.....

If yes, please identify the indemnity limit applying£

(i) Is any "Hot Work" envisaged?YES/NO

If "yes", does a Hot Work permit system operateYES/NO

NB The Council's Hot Work Permit System will be enforced in addition to any specific condition or warranty applying under the Contractors own Insurance Policy.

(j) All policies must extend to insure the negligent acts of any sub-contractors employed by you as the main contractor.

(k) In the event of a claim being made under this Section, please confirm:

The Name

Telephone Number

Fax Number

of the person(s) responsible for administering the loss.

2. Employers Liability

(a) Name of Insurer

(b) Policy Number

(c) Expiry Date

(d) Does the Policy cover:

1. Indemnity to Principal

2. Contractual Liability

(e) Detail exclusions if any NB We would expect such Insurance Policies should be "free" from exclusion

.....
.....
.....

(f) Please attach a copy of your Health and Safety Policy.

3. Contract Works Insurance

(a) Name of Insurer _____

(b) Policy Number _____

(c) Expiry Date _____

(d) Limit of Indemnity applying in respect of:

1. The Contract Works £

The minimum policy wording is "DE3"

2. Plant/Materials for incorporation in the Contract Works £

The contractor is responsible for insuring any loss/damage to hired in plant and for payment of continuing hire charges

(e) 1. Does cover include Testing/Commissioning cover?YES/NO

2. If yes, please confirm:

The period of cover _____

The Indemnity Limit applying£

That "Hot" Testing cover appliesYES/NO

(f) Detail the policy excess applying.....£

| | | |
|--|-----------------|--------|
| (g) Who is responsible for Insuring the "Works"? | The Council? | YES/NO |
| | The Contractor? | YES/NO |

4. Professional Indemnity Insurance

(a) Name of Insurer _____

(b) Policy Number _____

(c) Expiry Date _____

(d) Limit of Indemnity Any one event£

In the Aggregate any One Period..... £

(e) Principal exclusions – (Detail the policy excess applying).....£

5. Motor Vehicle Insurance

(a) Name of Insurer _____

(b) Policy Number _____

(c) Expiry Date _____

NB: Where employees provide their own vehicles for the business of the contractor/employer, in relation to the contract, the Council requires confirmation that the

contractor/employer operates a system of check whereby on annual basis the contractor/employer confirms and evidences with each vehicle owner/operator:-

(a) That the vehicle is insured (a copy of the current certificate of Motor Vehicle Insurance should be exhibited to the contractor/employer annually) - Yes/No

(b) That the vehicle user(s) hold a current and valid driving licence for the vehicle(s) Yes/No

(c) That where appropriate a copy of the current MOT Certificate has been vetted by the contractor/employer – Yes/No

6. Goods in Transit Insurance

- (a) Name of Insurer _____
- (b) Policy Number _____
- (c) Expiry Date _____
- (d) Cover Limit _____
- (e) Detail any exclusions e.g dual lifting _____

The policy cover requires to be “all risks of loss or damage” and the “goods” are required to be insured for their full replacement value, including loss or damage sustained during loading/unloading

7. In the event of the Council requiring further clarification as regards the extent of insurance provision please detail below the contact name and number of your authorised representative.

Name: _____

Insurer Name/Broker Name: _____

Telephone Number: _____

In completing this form I/We confirm that all information is accurate, to our knowledge and further that the current policy premium has been paid to the Insurers concerned.

Signed: _____ Date: _____

Company Name: _____

Address: _____

PERFORMANCE MONITORING SYSTEM

The purpose of the KPIs is to allow the project to be assessed in a common format which allows performance to be monitored during each Phase of works. In addition the information will be used to deliver year on year improvement across this programme.

Clients of the construction industry want their projects delivered:

- on time
- on budget
- free from defects
- efficiently
- right first time
- safely

It is envisaged that the KPIs will reflect the above criteria and that these will be meaningful to all parties.

In order to achieve this, the assessment will be based on the following criteria gathered from customer satisfaction questionnaires issued to the tenants and selection of management's criteria assessed by the Contract Administrator.

DETAILS AND REQUIREMENTS

The Contract Administrator shall operate the following performance monitoring system which is intended to promote continuous improvement and assist in achieving best value.

INSPECTION AND EVALUATION

1. Following the successful completion of a Work Order, the Contract Administrator or delegated officer will inspect the work and complete march-out process including post inspection and customer questionnaire.
2. The evaluation system is designed to monitor the Contractor's overall performance. A system of points will be used to assess this performance. The points will be issued by the Contract Administrator and will be solely at his discretion. The Contractor's performance will be subject to continual assessment by the CA.
3. Interim Performance reports will be produced for discussion at the Progress/Projects meeting and any problems highlighted will be addressed by the Contractor

SYSTEM OF AWARDING POINTS

The Contract Administrator will complete a Key Performance Indicator Report Form on a regular basis culminating in a report and score. Completed works will be inspected and points awarded for the following Key Performance Indicators:-

FACTORS BEING MEASURED

A. Timeliness

1. Projects fully completed within target timescales – 5 working days.
2. Accuracy of programme of work
3. 100% of defects completed within 5 working days of notification
4. Properties not receiving 7 day minimum notification period

Note: Evidence will be required to be provided of access attempts to prove “no access”.

B. Customer Satisfaction

95% of tenants to be satisfied or very satisfied with the contractor's performance based on the following

1. Response times to resolve claims or complaints letters (claims 28 days complaint 7 days)
2. Number of adverse comments on customer satisfaction
3. Housekeeping and care of customers property
4. Quality of the information provided prior to the start of the works by the contractor and his staff
5. Did the contractors staff have identification when they visited
6. Did the contractor start work on the date indicated or gave you a reason why this did not happen
7. Did you have any issues which were not resolved by the contractors staff
8. How satisfied were you with the level of protection used by the contractor in regard to your furniture
9. How was the contractors overall service to you
10. Did the contractor explain the operation of the system and its control clear

C. Quality

1. Standard of workmanship –assessed by CA or their delegated officer and established by the following criteria:-
 - Are materials used ,in accordance with the specification
 - Is the site supervision adequate
2. Customer feedback via questionnaire

D. Health and Safety

1. The number of incidents in contravention of the asbestos management regulations
2. Number of reportable incidents to the H.S.E.
3. Have all health and safety requirements been observed

E. Accounts Accuracy/Certification

1. Accuracy of submitted accounts
2. Have accounts been submitted in the correct format and within acceptable timescales
3. Performance with regard to certificates
4. Satisfactory completion of account

POINTS SYSTEM

The points system used will be as follows:-

| | Key Performance Indicator | Possible Points (A) | Points Awarded (B) | Comment |
|---|-----------------------------|---------------------|--------------------|---------|
| A | Timeliness | 20 | | |
| B | Customer Satisfaction | 25 | | |
| C | Quality | 30 | | |
| D | Health and Safety | 15 | | |
| E | Account accuracy | 10 | | |
| | Total | 100 | | |
| | Performance Percentage B/A% | | | |

The Total Points awarded for the work inspected will be calculated and the measure of performance expressed as a percentage of the Total Possible Points.

Any statistical information provided to the Contractor will be at the discretion of the Contract Administrator

CONTRACT PERFORMANCE

Satisfactory Contract Performance

90% and above represents satisfactory contract performance. Any recurring minor issues will be highlighted to the Contractor to allow continuous improvements to be achieved.

Unsatisfactory Contract Performance

Below 90% represents unsatisfactory contract performance. These issues will be highlighted to the Contractor to allow problems to be identified and improvements made.

Should Unsatisfactory Performance be identified at the end of a 'Phase' then the Contractor will not be included in the mini tender for the next 'Phase', although will be included in subsequent mini tenders.

Should a subsequent 'Phase' of works be carried out by a Contractor that has had an Unsatisfactory Performance previously, then they will be excluded from any remaining mini tenders for 'Phases' of work during the remaining term of the Framework.

Failure to improve performance to an acceptable level will result in the contractor being excluded from future mini tenders for 'Phases' of works.

Nothing within these clauses shall override the Main Contract Conditions

Environment Department
Director of Environment : Andrew J Cahill, BSc (Hons)

Housing and Maintenance Services
190 Carnwadric Road, Thornliebank, G46 8HR
Phone: 0141 577 3693 Fax: 0141 577 3183

Our Ref:
Your Ref:
Date: 24/01/2011
When calling please ask for: Janice Graham

Dear Occupier

Dear Occupier

Roof Renewal Programme

I write to advise you that as part of this years Capital Investment Programme 2010-11, your property address is scheduled to be re roofed.

The contract was let to (name of contractor) who will carry out this work on behalf of the Council.

The contact details of those involved with the delivery of this programme are as follows:-

| | (NAME) | (contact number) |
|--|--------|------------------|
| Construction Services Site Manager | ditto | ditto |
| Council Clerk of Works | ditto | ditto |
| Project Architect, Property and Technical Services | ditto | ditto |
| Housing Liaison Officer | ditto | ditto |

Any issues relating to the works, the first point of contact should be directed to the contractor's site manager or the Project Architect listed above. Any issues escalating from this point of contact will be passed on to the appropriate officer for action.

In relation to household insurance I would strongly recommend that each of you contact your insurers to advise them that scaffold will be erected in order to execute the works, they may also request details of the works and likely timescales.

A TV aerial will be fitted to the scaffold in order to maintain your TV reception throughout the duration of the works. However it should be noted that any satellite dishes attached to the building are not the responsibility of the Council or the Contractor, therefore if you do have a satellite dish I would recommend that you contact your service provider and ask them to remove or re-site on a temporary basis.

If you are having difficulty getting your provider to do this the Contractor may assist by attaching it temporarily to the scaffold. However, as previously stated this is not the

LETTER TO ALL RESIDENTS PRE WORK COMMENCING.MASTER

responsibility of the Contractor therefore they will not accept any liability for any damage caused to the satellite dish or interruption to your service. The Contractor will check your TV reception before and after the works.

If you have a balcony It is suggested for health and safety reasons that you do not make use of any external balconies throughout the duration of these works.

If you have any personal belongings or items of value in any of the communal areas (internal and external) I would strongly recommend that these be removed from these areas by you for the duration of the works to prevent any damages or breakages.

Both the Contractor and the Clerk of Works will inspect the site prior to work commencing and again upon completion of the works.

Yours faithfully

Property Services Manager

SUPPLIER'S INSURANCE QUESTIONNAIRE

Complete Relevant Sections Only

Contract Name

- If so, give details _____

- If not, please explain why _____

- (g) Detail exclusions that would apply to any work being performed in your capacity as Supplier to North Ayrshire Council – (Detail any policy excess applying)

Employee Liability (N.B. A minimum Indemnity limit of £5M any one occurrence is required).

- (a) Name of Insurer: _____
- (b) Policy Number: _____
- (c) Expiry Date: _____
- (d) Limit of Liability Any One Accident: _____

Is this limit reduced for any specific risks?YES/NO

If so, give details _____

3. Professional Indemnity (N.B. A minimum Indemnity limit of £5M any one occurrence is required).

- (a) Name of Insurer: _____
- (b) Policy Number: _____
- (c) Expiry Date: _____
- (d) Limit of Liability Any One Accident: _____

Is this limit reduced for any specific risks?YES/NO

If so, give details _____

Nb Professional Indemnity insurance must include losses from failed financial institutions.

4. In the event of the Council requiring further clarification as regards the extent of insurance provision please detail below the contact name and number of your authorised representative.

Name: _____

Insurer Name/Broker Name: _____

Telephone Number:

In completing this form I/We confirm that all information is accurate, to our knowledge and further that the current policy premium has been paid to the Insurers concerned.

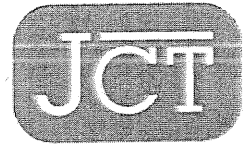
Signed: _____ Date: _____

Company Name: _____

Address: _____

Name of Insurance Company to be inserted where the Certificate is signed by an Insurance Broker.

**THIS MUST BE COMPLETED BY AN INSURANCE COMPANY OR BROKER AND
ACCOMPANIED BY A LETTER FROM THE INSURANCE COMPANY OR BROKER ON
LETTER HEADED PAPER**



SBC/Q

Standard Building Contract
With Quantities



Standard Building Contract

Section 6 Injury, Damage and Insurance

Injury to Persons and Property

Liability of Contractor – personal injury or death

- 6-1 The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer or of any of the Employer's Persons.

Liability of Contractor – injury or damage to property

- 6-2 The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or of any of the Contractor's Persons. This liability and indemnity is subject to clause 6-3 and, where Insurance Option C (Schedule 3, paragraph C-1) applies, excludes loss or damage to any property required to be insured thereunder caused by a Specified Peril.

Injury or damage to property – Works and Site Materials excluded

- 6-3
- 1 Subject to clauses 6-3-2 and 6-3-3, the reference in clause 6-2 to 'property real or personal' does not include the Works, work executed and/or Site Materials up to and including whichever is the earlier of:
 - 1 the date of issue of the Practical Completion Certificate; or
 - 2 the date of termination of the Contractor's employment.
 - 2 Where a Section Completion Certificate is issued in respect of a Section, that Section shall not after the date of issue of that certificate be regarded as 'the Works' or 'work executed' for the purpose of clause 6-3-1.
 - 3 If clause 2-33 has been operated, then, after the Relevant Date, the Relevant Part shall not be regarded as 'the Works' or 'work executed' for the purpose of clause 6-3-1.

Insurance against Personal Injury and Property Damage

Contractor's insurance of his liability

- 6-4
- 1 Without prejudice to his obligation to indemnify the Employer under clauses 6-1 and 6-2, the Contractor shall take out and maintain insurance in respect of claims arising out of his liability referred to in clauses 6-1 and 6-2 which:
 - 1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and
 - 2 for all other claims to which clause 6-4-1 applies^[50], shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall be in a sum not less than that stated in the Contract Particulars for any one occurrence or series of occurrences arising out of one event.^[51]

[50] It should be noted that the cover granted under public liability policies taken out pursuant to clause 6-4-1 may not be co-extensive with the indemnity given to the Employer in clauses 6-1 and 6-2: for example, each claim may be subject to the excess in the policy and cover may not be available in respect of loss or damage due to gradual pollution.

[51] The Contractor may, if he wishes, insure for a sum greater than that stated in the Contract Particulars.

- 2 As and when reasonably required to do so by the Employer, the Contractor shall send to the Architect/Contract Administrator for inspection by the Employer documentary evidence that the insurances required by clause 6-4-1 have been taken out and are being maintained, and at any time the Employer may (but shall not unreasonably or vexatiously) require that the relevant policy or policies and related premium receipts be sent to the Architect/Contract Administrator for such inspection.
- 3 If the Contractor defaults in taking out or in maintaining insurance in accordance with clause 6-4-1 the Employer may himself insure against any liability or expense which he may incur as a result of such default and the amount paid or payable by him in respect of premiums therefor may be deducted from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

Contractor's insurance of liability of Employer

- 6-5 1 If the Contract Particulars state that insurance under clause 6-5-1 may be required, the Contractor shall, if instructed by the Architect/Contract Administrator, take out a policy of insurance in the names of the Employer and the Contractor^[52] for the amount of indemnity there stated in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works, excluding injury or damage:
 - 1 for which the Contractor is liable under clause 6-2; or
 - 2 which is attributable to errors or omissions in the designing of the Works; or
 - 3 which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed and the manner of its execution; or
 - 4 (if Insurance Option C applies) which it is the responsibility of the Employer to insure under paragraph C-1 of Schedule 3; or
 - 5 to the Works and Site Materials brought on to the site of the Contract for the purpose of its execution except where the Practical Completion Certificate has been issued or in so far as any Section is the subject of a Section Completion Certificate; or
 - 6 which arises from any consequence of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion or revolution, insurrection or military or usurped power; or
 - 7 which is directly or indirectly caused by or contributed to by or arises from the Excepted Risks; or
 - 8 which is directly or indirectly caused by or arises out of pollution or contamination of buildings or other structures or of water or land or the atmosphere happening during the period of insurance, save that this exception shall not apply in respect of pollution or contamination caused by a sudden identifiable, unintended and unexpected incident which takes place in its entirety at a specific moment in time and place during the period of insurance (all pollution or contamination which arises out of one incident being considered for the purpose of this insurance to have occurred at the time such incident takes place); or
 - 9 which results in any costs or expenses being incurred by the Employer or in any other sums being payable by the Employer in respect of damages for breach of contract, except to the extent that such costs or expenses or damages would have attached in the absence of any contract.
- 2 Any insurance under clause 6-5-1 shall be placed with insurers approved by the Employer, and the Contractor shall send to the Architect/Contract Administrator for deposit with the Employer the policy or policies and related premium receipts.
- 3 The amounts expended by the Contractor to take out and maintain the insurance referred to in clause 6-5-1 shall be added to the Contract Sum.

[52] A policy of insurance taken out for the purposes of clause 6-5 should not have an expiry date earlier than the end of the Rectification Period.

Excepted Risks

- 6-6 Notwithstanding clauses 6-1, 6-2 and 6-4-1, the Contractor shall not be liable either to indemnify the Employer or to insure against any personal injury to or the death of any person or any damage, loss or injury caused to the Works or Site Materials, work executed, the site, or any other property, by the effect of an Excepted Risk.

Insurance of the Works

Insurance Options

- 6-7 Insurance Options A, B and C are set out in Schedule 3. The Insurance Option that applies to this Contract is that stated in the Contract Particulars.^[53]

Related definitions

- 6-8 In Schedule 3 and, so far as relevant, in the clauses of these Conditions the following phrases shall have the meanings given below:

All Risks Insurance^[54]:

insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

(a) property which is defective due to:

- (i) wear and tear,
- (ii) obsolescence, or
- (iii) deterioration, rust or mildew;

(b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective^[55];

(c) loss or damage caused by or arising from:

- (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,

[53] Insurance Option A is applicable to the erection of new buildings where the Contractor is required to take out a Joint Names Policy for All Risks Insurance for the Works and Insurance Option B is applicable where the Employer has elected to take out such Joint Names Policy. Insurance Option C is for use in the case of alterations of or extensions to existing structures; under it the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also a Joint Names Policy to insure the existing structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and homeowners) may not be able readily to obtain the Joint Names cover, in particular that under paragraph C-1. If so, Option C should not be stated to apply and consequential amendments may be necessary. See the Guide.

[54] The definition of All Risks Insurance in clause 6-8 defines the risks for which insurance is required. Policies issued by insurers are not standardised and the way in which insurance for those risks is expressed varies. Obtaining Terrorism Cover, which is necessary in order to comply with the requirements of Insurance Option A, B or C, will involve an additional premium and may in certain situations be difficult to effect. Where a difficulty arises discussion should take place between the Parties and their insurance advisers. See the Guide.

[55] In any policy for All Risks Insurance taken out under Insurance Option A or B or paragraph C-2 of Insurance Option C, cover should not be reduced by the terms of any exclusion written in the policy beyond the terms of paragraph (b) in this definition of All Risks Insurance; thus an exclusion in terms 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of those Insurance Options or of that definition. Wider All Risks cover than that specified may be available to Contractors, though it is not standard.

(ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or

(iii) an Excepted Risk.

| | |
|---------------------|--|
| Excepted Risks: | ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds. |
| Joint Names Policy: | a policy of insurance which includes the Employer and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or, pursuant to clause 6.9, recognised as an insured thereunder. |
| Specified Perils: | fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks. |
| Terrorism Cover: | insurance provided by a Joint Names Policy under Insurance Option A, B or C for physical loss or damage to work executed and Site Materials or to an existing structure and/or its contents caused by terrorism. ^[56] |

Sub-contractors – Specified Perils cover under Joint Names All Risks Policies

6.9 1 The Contractor, where Insurance Option A applies, and the Employer, where Insurance Option B or C applies, shall ensure that the Joint Names Policy referred to in paragraph A-1, A-3, B-1 or C-2 of Schedule 3 shall either:

- 1 provide for recognition of each sub-contractor as an insured under the relevant Joint Names Policy; or
- 2 include a waiver by the relevant insurers of any right of subrogation which they may have against any such sub-contractor

in respect of loss or damage by the Specified Perils to the Works or relevant Section, work executed and Site Materials and that this recognition or waiver shall continue up to and including the date of issue of any certificate or other document which states that in relation to the Works, the sub-contractor's works are practically complete or, if earlier, the date of termination of the sub-contractor's employment. Where there are Sections and the sub-contractor's works relate to more than one Section, the recognition or waiver for such sub-contractor shall nevertheless cease in relation to a Section upon the issue of such certificate or other document for his work in that Section.

2 The provisions of clause 6.9.1 shall apply also in respect of any Joint Names Policy taken out by the Employer under paragraph A-2, or by the Contractor under paragraph B-2.1.2 or C-3.1.2 of Schedule 3.

Terrorism Cover – non-availability – Employer's options

- 6.10 1 If the insurers named in the Joint Names Policy, or (where Insurance Option C applies) the insurers named in either or both such policies, notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available, the recipient shall immediately inform the other Party.
- 2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor in writing

[56] As respects this definition, the extent of Terrorism Cover and possible difficulties in complying with the requirements of Insurance Options A, B and C, see the Guide.

either

- 1 that, notwithstanding the cessation of Terrorism Cover, the Employer requires that the Works continue to be carried out
- or
- 2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) the Contractor's employment under this Contract shall terminate.
- 3 If the Employer gives notice of termination under clause 6-10-2-2, then upon and from such termination the provisions of clauses 8-12-2 to 8-12-5 (excluding clause 8-12-3-5) shall apply and the other provisions of this Contract which require any further payment or any release of Retention to the Contractor shall cease to apply.
- 4 If the Employer does not give notice of termination under clause 6-10-2-2, then:
 - 1 if work executed and/or Site Materials suffer physical loss or damage caused by terrorism, the Contractor shall with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris and proceed with the carrying out of the Works;
 - 2 the restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris shall be treated as a Variation, with no reduction in any amount payable to the Contractor pursuant to this clause 6-10-4 by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage; and
 - 3 (where Insurance Option C applies) the requirement that the Works continue to be carried out shall not be affected by any loss or damage to the existing structures and/or their contents caused by terrorism but not so as thereby to impose any obligation on the Employer to reinstate the existing structures.

CDP Professional Indemnity Insurance

Obligation to insure

6-11 Where there is a Contractor's Designed Portion, the Contractor shall:

- 1 forthwith after this Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy with a limit of indemnity of the type and in an amount not less than that stated in the Contract Particulars^[57];
- 2 provided it remains available at commercially reasonable rates, maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Works; and
- 3 as and when reasonably requested to do so by the Employer or the Architect/Contract Administrator, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

Increased cost and non-availability

6-12 If the insurance referred to in clause 6-11 ceases to be available at commercially reasonable rates, the Contractor shall immediately give notice to the Employer so that the Contractor and the Employer can discuss the means of best protecting the respective positions of the Employer and the Contractor in the absence of such insurance.

[57] See the Guide.

APPENDIX 7

WEST LOTHIAN COUNCIL

West Lothian Council has completed its major work on the issues you refer to, so our position is historic.

In our experience tenants will put in claims against the council even though a contractor is involved. Contractors do not always deal with the claims as quickly as you may like. Our solution was to forward the claim to the appropriate contractor and advise the contractor that we had also written to the claimant advising him of our action and who to contact. This did reduce the problem. We did not monitor the claims settlements, but did monitor the number and causes of claims to give the frontline service risk management information.

The council and our insurers have always held to the line that an independent contractor is legally liable for his own actions/inactions. Claims could come back to the council if the contractor ceases trading or under the normal exceptions to this legal position.

The council does not use claim forms for third party claims (why put a reminder on the mantle shelf?). Claimants need to write in and may receive help in writing a letter.

The rest of your queries relate to quality issues and I will forward your request for information to the council's Housing, Construction and Building Service.

ANNEXATION B

GOVERNANCE AND SCRUTINY REVIEW

INSURANCE ARRANGEMENTS FOR CONTRACTORS CARRYING OUT WORK ON BEHALF OF THE COUNCIL

CONTRACTOR RESPONSES – 2 CONTRACTORS RESPONDED FROM 7 QUESTIONNAIRES ISSUED

1. **How quickly a claim is acknowledged in writing to the client following first intimation of the client's intention to claim.**

Mctear Contracts Ltd

7 Days

CFM Building Services

When a formal complaint is received a letter of acknowledgement will be issued on the same day.

2. **What guidance is provided to claimants as to (a) what procedures will have to be followed, (b) the basis upon which a claim will either stand or fall? And (c) what procedures exist in the event that the decision on liability is appealed by the claimant? Please provide examples of guidance documents issued/procedures followed.**

Mctear Contracts Ltd

Attached complaints procedure & claim form (Appendix I)

CFM Building Services

CFM Building Services are proactive in complaint management, the primary focus being on minimizing the occurrence of complaints or claims. This is done through a number of channels including training and adherence to our strict code of conduct. Tenants are provided with the number of our head office should they wish to contact anyone at anytime to discuss any matter relating to the works although they are encouraged to direct queries or questions to the dedicated, site based agent. A satisfaction survey is issued and a march out conducted on completion to identify any issues or tenant concerns, allowing us to understand how the tenant feels about all aspects of the work before it is closed off. I have attached, a copy of the internal process followed when managing complaints or claims (Appendix II). We are in the process of developing a tenant 3 C's feedback policy handout to provide further guidance on how they can register all feedback – compliments, comments and complaints.

3. **Where a claim is referred to your insurer what timescale is generally set for your insurer to acknowledge receipt of the claim to the Client?**

Mctear Contracts Ltd

Our insurer will respond within 14 days

CFM Building Services

When claims are sent to our insurers for resolution we would still provide a local owner to keep in regular contact with the tenant. The timescale for resolution would depend on the level of investigation required.

4. **Where a claim falls below your excess and is handled “in-house” what procedure is in place to allow the client to appeal the decision?**

Mctear Contracts Ltd

Where a claim falls below our insurance excess we allow the claimant to appeal to higher management, if the claim for more compensation is justified then it is then passed on to our insurer.

CFM Building Services

As our client, East Ayrshire Council would be consulted with and informed upon receipt and throughout the investigation.

5. **Similarly where the claim is handled by your insurers what appeals protocol exists and how is this brought to the client’s attention?**

Mctear Contracts Ltd

I have passed this question on to our insurers to answer.

CFM Building Services Ltd

See question 4 above, a copy of the investigation findings would be discussed with East Ayrshire Council.

6. **How many challenges have been made under 4 and 5 above in each of the last 3 years and how many claims decisions have been overturned resulting in a payment being made?**

Mctear Contracts Ltd

No challenges have been made. We normally come to an amicable agreement with the claimant.

CFM Building Services Ltd

There has been no claims submitted to insurers or challenges made in the past 3 years, all claims have been managed and resolved locally. There has been 2 payouts made for substantiated claims, both were resolved promptly and amicably.

7. **What is the value of both claims paid and outstanding in each of the last 3 years?**

Mctear Contracts Ltd

Claim total for the last 3 years - £1650. No claims outstanding.

CFM Building Services Ltd

There are no claims outstanding and the value of payment is £49.19.



CONTRACTS LTD

Complaints Procedure

McTear Contracts Limited is committed to providing services of the highest quality. However things don't always go according to plan, but by listening to the views of all who use our services, we hope to continually improve our performance. We aim to ensure that:

- The procedure for making a complaint is as clear as possible
- Your complaint will be taken seriously
- Your complaint will be dealt with same day
- You will be given a full explanation or an apology where McTear Contracts are at fault
- You will be informed of any action taken to ensure similar problems do not occur again
- If there is an apparent delay, you will be kept informed
- We will learn from our mistakes, your complaints and use them to improve our services

How to Make a Complaint

- You can make a complaint to us in writing, by fax, e-mail or by telephone.
- Please be sure to give us your full address if you would like us to write to you.

Stage one

When making a complaint please address your complaint to the person dealing with your application/enquiry/service. If you feel this person cannot deal with your complaint to your satisfaction, please ask for the name of a manager you can contact.

Please make clear the nature of your complaint and provide information as to what took place and when.

We will contact you by telephone or letter to discuss your complaint and propose a suitable outcome to remedy your complaint.

Stage two

If your complaint has been dealt with but you are unsatisfied with the outcome, please contact Brian McTear (Managing Director), Keiron McTear (Commercial Director) or Jamie Mowat (Operations Manager) for them to look into the situation personally. You should, however, make clear your reasons for being unsatisfied with the original outcome.



Unit 12, Canyon Road, Netherton Industrial Estate, Wishaw, ML2 0EG

Tel: 01698 373000 • Fax: 01698 375444

Vat Registration No. 856 9571 68

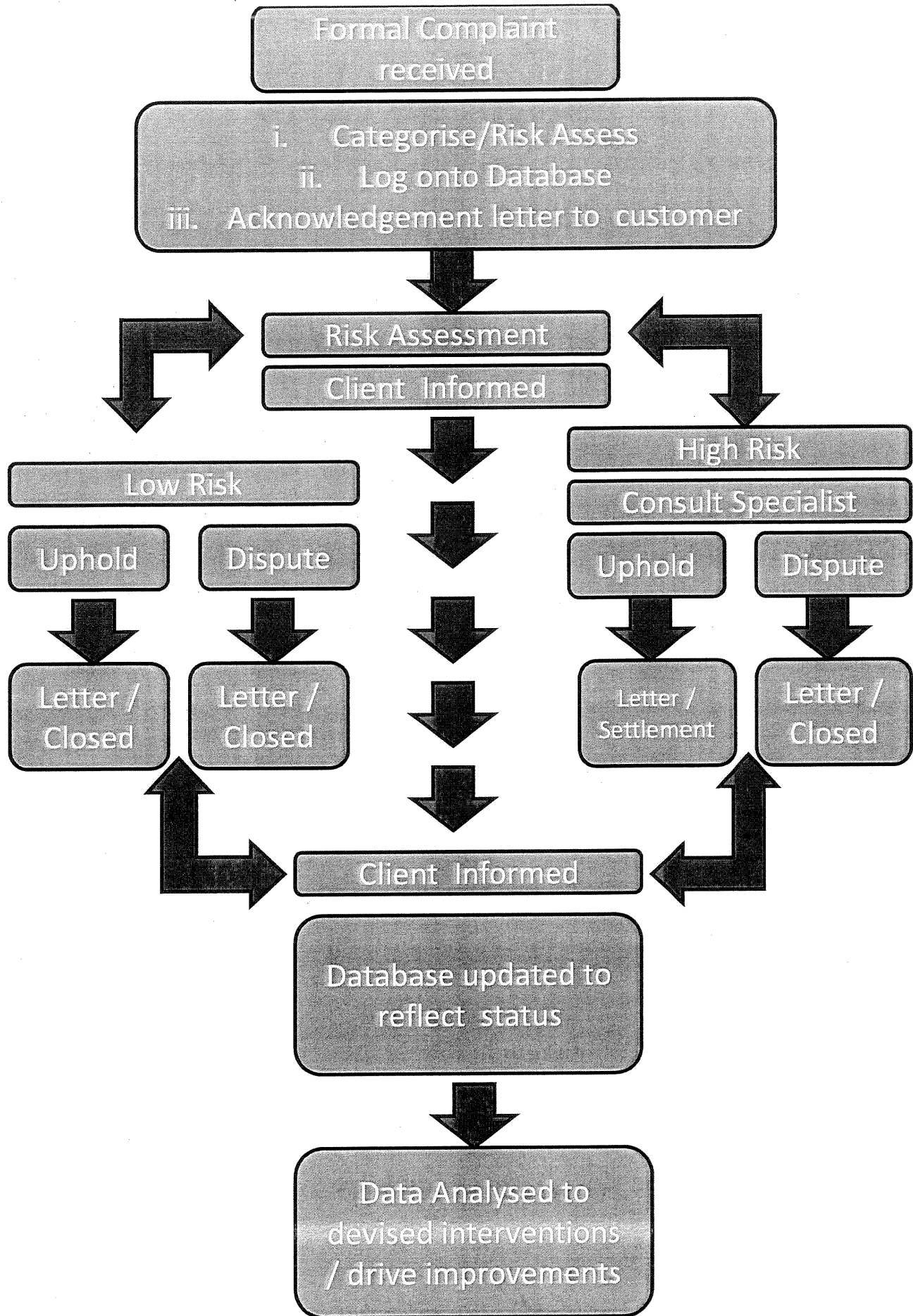
CUSTOMER COMPLAINT FORM

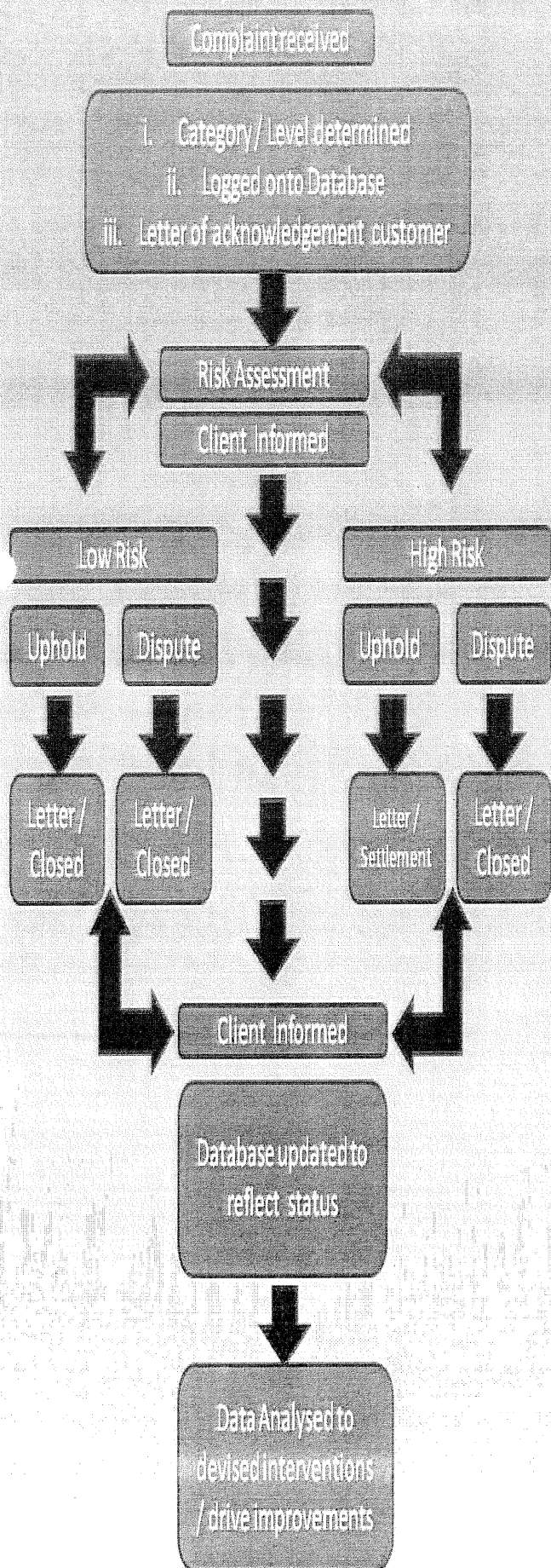
| | | | | | |
|---|--------------|---------------|--------------|---------|--|
| CUSTOMER INFORMATION | | | | | |
| Customer Name: | | | | | |
| Address: | | | | | |
| Tel. | | Mobile. | | e-mail. | |
| Nature of complaint: | | | | | |
| Immediate action requested by customer: | | | | | |
| REPORTED BY: | Sign: | Title: | Date: | | |



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APPENDIX 2





Day 1

Received via mail, email, letter, telephone, client. If a complaint is received by a operative he/she will in all circumstances resolve that complaint if they can but will refer it back to the complaint champion for action/info.

All complaints are risk assessed, logged and an acknowledgement letter sent.

If the complaint is high risk it will be immediately referred to the Customer Care Manager who will seek specialist advice.

The client is informed of all complaints on the day that they are received and is updated regularly as complaints status changes.

Day 1-5

Low risk complaints are managed locally and promptly, complaint champion has financial authority to resolve any claim below (£100), Claims of (£100-£250) should be authorised by the contracts manager but may remain in the site agents ownership unless deemed otherwise.

High risk complaints will be passed to the appropriate specialist team (PR/ HR / Legal/ H&S or combination) for advice but the complaint champion shall remain the point of contact for the tenant unless deemed inappropriate/ ineffective.

Once investigations and other information reviewed decision to uphold or refute complaints is made the client is consulted and appropriate letters issued to complainant

Day 5-10

Client is sent a copy of customer letter in advance, informing of complaint action. If complaint is high risk a report will also to be issued.

A joint visit may be required or joint letters may be sent to reflect partnership decision.

Database is updated to reflect status. Data is analysed to identify trends on both local and national level.

Data provides focus for local action planning.

Ongoing

ANNEXATION C

GOVERNANCE AND SCRUTINY REVIEW

INSURANCE ARRANGEMENTS FOR CONTRACTORS CARRYING OUT WORK ON BEHALF OF THE COUNCIL

TENANTS QUESTIONNAIRE RESPONSES – 14 RESPONSES RECEIVED FROM 40 QUESTIONNAIRES ISSUED

1. Did you know who to contact to make your claim?

Yes

8

No

4

No Response

2

Yes

- Having contacted the Council we were advised to contact the contractor directly.
- The name of the contractor and a number were provided by the Council before the work was carried out and it encouraged you to phone with any complaints.
- Had forms sent from Council.
- EAC.
- Address was on the claim form.
- The Council.
- Helen Mirrium.
- Sub contractor did work contacted East Ayrshire Council.
- Catriona at Building and Works.
- Contacted repairs department, said they would contact us but never did, after us contacting them constantly they sent out an inspector but still nothing for several months.

No

- I had no information on who to contact and no one would originally take the responsibility for the damage.
- The only information I had was to make direct claim with my insurance but the form you XXXX never happened.
- I called the support team but wasn't sure if it should have been the window company I should maybe have dealt with direct.

2. When you had made your claim do you feel you were kept advised of your claim's progress?

Yes

6

No

8

Yes

- I made a phone call, received a visit, filled out the paperwork, provided receipts and a cheque was sent. It was that simple.
- Yes but though it was a slow process.
- Received a call and a letter.
- With phone calls

No

- Several letters were exchanged but the Councils position was it was between the contractor and ourselves.
- I received money to repair the damages to my daughters ceiling only because I persistently called the contractor myself, they very rarely called me back.
- Were not interested. In fact sink had leaked since put it in, flooring ruined again had to get Council out because of the dampness yet I complained when they put it in there was water under sink.
- Company did not respond within 21 day limit. After that I was ignored.
- I was not advised about my claim progress.
- Initially I was kept in the dark about it until I contacted Councillor Cook.
- As said above no contact from Council for weeks and months on end, we only knew what was happening when we got really fed up and contacted the head manager of repairs/housing department. That was when things started happening.

3. Did you feel you claim was dealt with in a reasonable time?

Yes

5

No

9

Yes

- Claim was dealt with quickly.

No

- After several months we had to take the contractor to court. At the hearing the court found in our favour.
- Once the Council were involved the claim was dealt with swiftly but not by the contractors, although to date my carpet was never cleaned. I eventually gave up on trying as I was passed from one person to another all the time.
- I don't feel my claim was dealt with properly, my carpets were shampooed, now the one in my front bedroom is so thin that when I Hoover it I can see the shape of the floorboards and the one in my back bedroom is marked and because it's a beige carpet is noticeable.
- Were not interested Frew just said it would be dealt with. Heard only through supervisor of job.
- I am still in dispute with this company 14 months later.
- When I sent my claim form in I never received my compensation for 3-4 weeks.
- It took months for them to acknowledge this fact although I was insured at the time I was never informed of any settlement being made to the insurers.
- The claim took approximately 8-10 months to be settled, then took us a further 2 months of having to wait on a tradesman due to the delay in the pay out so all in all nearly a year.

4. Is there anything you feel that could be put in place that would have assisted you through the claim's progress?

- The Council should be responsible for taking all claims with contractors it employs. The Council took very little notice of our point of view and sided with the contractor without giving any reason.
- I think my claim was dealt with easily because the workmen were aware of the damage they done and I reported it to their manager quickly.
- I feel that any company carrying out work on behalf of the Council should leave a card with company contact details in each home they visit.
- I feel I should have been happy with the outcome and I wasn't. My carpets are ruined, my blinds don't fit properly and my bathroom mats had to be thrown out, I take care of my things and through no fault of my own my things have been ruined, if peoples belongings are being damaged they should be renewed.
- Had to get information from Lugar.
- A Council or independent advocate i.e. one person dealing with the issues.
- No.
- If you provided a visitor to confirm it had been damaged but no one acknowledged me I am sure if you had taken more interest in my complaint it would have been cleared much sooner as it wasn't till I contacted Councillor Cook that anything was done.
- Please deal with it quicker as I need decorators.
- The whole process was slow from start to finish and there was very poor communication between the staff and the tenants. Staff could be doing their job role a lot better and appreciate the position the tenants are in. Also we have waited over a year for windows, guttering and doors to be repaired, in this year 2 windows have been repaired. We received a letter after many months of arguing and inspectors coming and going on the 9th of September 2010 saying we would be getting a new external front and back door fitted in the near future. Its now the 18th of February 2011 and still nothing has been heard from East Ayrshire Council!!! I would just like to know why I pay full rent and council tax every month for?