

Appendix A (to Tree work policy)

Claims arising from alleged encroachment of Tree Roots

PRE – ACTION PROTOCOL

FIRST NOTIFICATION

1. When the Claimant first notices damage to the property which may be attributed to subsidence resulting from tree root encroachment, or when the Insurer first receives notification of such damage, the following information shall be provided to the Council:-
 - a. The full address of the property.
 - b. The full name of the owner of the property
 - c. Name and address of the insurer of the property (if applicable).
 - d. Full details of all other parties who have a financial interest in the property.
 - e. A brief description of the property e.g. semi-detached 2 bedroom, with lounge, dining room, kitchen and garage.
 - f. A brief history of the property which should include details such as date of construction, date of purchase by the Claimant, including any reports prepared at the time, structural alterations and extensions.
 - g. Details of the damage to the property, the date it commenced or was first noted and the reason(s) why it is believed Council owned tree(s) are implicated. Before a claim can be considered the allegations will need to be supported by adequate technical evidence.
 - h. Clear identification of the tree/shrubs the roots of which it is believed may have encroached. This should be by way of a sketch plan or photographs rather than simply by description.

MONITORING

2. It is generally acknowledged that it is essential to carry out optical level surveys, crack width monitoring and distortion surveys of properties that are alleged to have been damaged by the influence of encroaching tree roots.
3. Crack width monitoring is to be carried out from the earliest possible date on behalf of the Claimant, or if not then consent will be granted for the Council to carry out such monitoring at the property. The results of such Monitoring shall be mutually disclosed on a quarterly basis.
4. In all cases an optical level survey will be required and if not done on behalf of the Claimant then consent will be granted for the Council to carry out such a survey.
5. When appropriate a distortion survey will be carried out if not done on behalf of the Claimant then consent will be granted for the Council to carry out such a survey.

TECHNICAL EVIDENCE

6. If no technical experts have been instructed or reports obtained, the Council will seek the agreement of the Claimant to the appointment of a jointly instructed expert or experts as appropriate. Either, or both parties may propose details to the other party of relevant experts to be instructed. There shall be a single joint letter of instruction, to be approved by both parties in advance. This will include Structural Engineers, Arboriculturalists, and geotechnical experts such as ground investigation, soil analysis, root identification etc.
7. In circumstances where the claimant has already instructed experts, the Council may require consent for its own Structural Engineer and other appropriate experts to inspect the property both internally and externally.
8. Appropriate ground investigation shall be carried out and shall include suitable trial pits and borehole investigations. If these are not conducted by jointly instructed experts, the Council's Structural Engineers shall be given notification of when such investigations are to be carried out in order to enable their attendance. The results of such investigations shall be mutually disclosed to the Council within 28 days of receipt.
9. If ground investigations have already been concluded, the Council may require consent to conduct their own investigations.
10. In cases where experts have been instructed prior to the first notification to the Council, copies of all geo-technical, structural and arboriculture reports that have been obtained since the date of the damage first occurring shall be supplied to the City Council, together with all monitoring records.
11. In circumstances where there is no agreement to a single joint expert, both parties will instigate a meeting of their respective experts to produce a joint statement of issues agreed and not agreed. Where there is a disagreement, each expert shall explain the reason for their opinion in the joint statement.

WORKS

12. The Council shall be consulted during the preparation of the specification for such repairs as are carried out and shall be a demonstration of why such works are required as a direct result of the alleged tree root encroachment.
13. When it is envisaged that it will be necessary for occupants to vacate a building while all or part of the repairs are being carried out then this should be notified, with details of the temporary accommodation including all relevant estimates to the Council before works commence. It is to be expected that the temporary accommodation will be in the same locality and of a similar standard to that being repaired. For short stays use of hotels and guesthouses may be considered. It is

possible that the Council's Housing Department may be able to offer to provide temporary accommodation while the property is being repaired.

PROPERTY VALUE

14. Whenever possible details should be provided as to the current market value of the property, and the anticipated value following repair.

LETTER OF CLAIM

15. If the Claimant's case is more advance when this protocol is first published, then prior to the commencement of proceedings, the Claimant's representative shall write a letter of claim to the Council setting out clearly:-
 - (a) The Claimants full address. (Where the claim is on behalf of an insurer, full details should also be provided of the insured and the occupier of the property, if different to the insured.)
 - (b) A clear summary of the facts upon which the case is based.
 - (c) Details of the basis on which the claim is made.
 - (d) The date the damage was first noted or recommended.
 - (e) Details of all or any previous contact with the Council in relation to the particular tree(s) and or shrubs.
16. The letter of claim should be accompanied by copies of all geo-technical, Structural engineers and arboriculture reports that have been obtained since the date of the damage first occurring.
17. If a distortion survey or optical level monitoring or crack width monitoring have been carried out at the property, copies of the survey results and all the monitoring records should be provided.
18. In circumstances where the Claimant has already instructed experts, the Council may require consent for its own Structural Engineers and appropriate experts to inspect the property both internally and externally.
19. If repairs to the property have been completed, a certified account and detailed Drawings of the works shall be supplied to the Council.

RECOVERY OF UNINSURED LOSSES/POLICY EXCESS ONLY

20. Where the property owner is protected by an insurance policy, and repairs to a property are carried out under that insurance, there will arise an uninsured loss in the form of an excess paid by the policyholder and possibly for other items not covered by the policy.

There are a number of alternatives for dealing with such claims:-

1. Where the Council settles a claim with the building insurer and a claim for uninsured loss is received from the policyholder.
 - (a) A check must be made against the settlement to ascertain if the uninsured loss was included. If so no further payment is made.
 - (b) If the uninsured loss was not included in the settlement, the Claimant must produce to the Council, a receipted account clearly indentifying the amount as policy excess. The excess is then recoverable from the Council. Where the uninsured loss includes other items these will be assessed to see if they were necessarily incurred and reasonable in the circumstances and offer will be made to pay in full or in part or an explanation will be given as to why this part of the claim is rejected.
2. Where a claim made by the Insurer has been successfully refuted, it will follow that any claim for the uninsured losses should be refuted.
3. In cases where no claim has been received from the insurer the following guidelines should be applied.
 - (a) Repairs will, in the majority of cases have been completed and it would be disproportionate for the Council to commence its own investigation.
 - (b) Receipted accounts should be obtained from the policyholder.
 - (c) Payment of the uninsured losses will be discretionary based upon:-
 - i. Documentary evidence of payment of excess and other uninsured losses.
 - ii. Production of the insurance policy
 - iii. Address of the property affected
4. Council Officers will know if a property is situated within an area where adjacent properties have been the subject of settled claims. There must, therefore, be a degree of judgement, based on the above and whether on the balance of the probabilities, it is equitable for settlement for the full or partial settlement of the uninsured loss claim.
5. There may be instances where the owner of the property has recovered a proportion of an uninsured loss from the building insurer as a result of its inclusion in a settlement between the Council and the Insurer. It is envisaged that such circumstances will give rise to a claim for the outstanding balance of the uninsured loss.

Each claim for the balance of the excess must be decided upon its own merits using the same guidelines as set 3(c) above, and payment made as appropriate up to the total value of 100% of the uninsured loss.

