

COMPENSATION POLICY

Staff Guidance Notes

1. INTRODUCTION

- 1.1 We aim to provide a good quality service to our customers and ensure we meet all of our legal and regulatory responsibilities. When we fail to meet set standards or get things wrong, we will offer an apology and put things right as quickly as possible. We will also offer compensation in certain circumstances as set out in our Compensation Policy.
- 1.2 These guidance notes are designed to ensure staff take a fair and proportionate approach to offering redress and awarding compensation. They should be read in conjunction with our Complaints Policy, Compensation Policy and Reasonable Adjustments Policy.
- 1.3 When considering the most appropriate remedies, we will exercise discretion, having considered the individual circumstances of each complaint. No two complaints are the same and the remedies that we offer will be different in every case.
- 1.4 These guidance notes should be used when considering service failures, formal complaints and any 'out of pocket' expenses incurred by a tenant as a direct result of our actions or inactions. They do not apply to statutory compensation claims such as Home Loss Payments or claims covered under our Insurance Policy.

2. KEY CONSIDERATIONS

- 2.1 When investigating complaints, we will carefully consider whether and how a complainant has been adversely affected by our actions or omissions. We will then consider what remedies are required to put matters right for the complainant. This may be through an apology, an offer of compensation or other actions. There must be a clear link between the service failure that is found and the remedy that is identified
- 2.2 Awards of compensation will be made in accordance with these guidelines, which are based levels suggested by the Housing Ombudsman Service.
- 2.3 We will ask a complainant what they would like us to do to resolve their complaint and will take these views into consideration when considering the most appropriate remedies.
- 2.4 Whilst we will exercise discretion, we will not propose remedies that would adversely affect other individuals or mean that the complainant receive preferential treatment compared to others in the same situation. For example, we will not offer a complainant a particular property, where there are other applicants who have a higher priority, as that would be unfair to other applicants.
- 2.5 In general, we will not offer to reimburse a complainant for their time off work, loss of wages or loss of employment whilst repairs are carried out. Whilst

such works will inevitably cause some inconvenience, the tenancy agreement requires tenants to provide access for repairs to be completed.

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Compensation may, however, be deemed appropriate where repairs appointments are repeatedly missed or we fail to resolve the repair issue.

3.0 PAYMENTS OF COMPENSATION AND ARREARS

3.1 We will offset any compensation against a complainant's rent or service charge arrears. We will not do this however, if the arrears are due to our mistake or where the complainant has incurred 'out of pocket' expenses as a direct result of our actions or inactions.

4.0 QUESTIONS TO CONSIDER

4.1 As noted previously, each case will be considered on its own merits. Key questions that may help you determine the appropriate remedy include:

- What has gone wrong?
- Can it be put right - what actions could be taken to remedy the situation?
- What would the complainant like to happen?
- How has the complainant been adversely affected? •
- Is there an actual quantifiable financial loss – for example, has the complainant incurred costs as a result of what happened, or not received payments that they should have?
- What other impact has there been (for example distress caused)?

- Did the complainant's actions or inactions, or those of a third party (for example a complainant's advocate), contribute to what happened in the case?

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- What remedy would be proportionate, appropriate and reasonable in the circumstances of the case?

5.0 TYPES OF REMEDY

5.1 The remedies that we consider should, as far as possible, put a complainant back in the position they would have been in had the service failure or mistake not occurred. Where this is not possible, we will consider whether another remedy, such as financial redress, is appropriate. Potential remedies include:

5.2 An apology

In some circumstances an apology is all that is required. An apology can be made in writing or in person to the complainant. The responsibility for making an apology is a corporate one and is made by STH rather than an identified member of staff. An apology should:

- Acknowledge the service failure or mistakes that have been made.
- Accept responsibility for it.
- Explain clearly why the mistake or service failure happened.
- Express sincere regret.
- Where appropriate, include assurances that the same service failure or mistakes should not occur again and set out what steps have been taken to try to ensure this.

5.2 Policies and Procedures

Our investigation could find that a policy or procedure does not provide adequate guidance for staff in a particular area, is ambiguous or provides conflicting or out of date advice. In such circumstances, it may be appropriate to:

- Revise publicised material .
- Review procedures to prevent the same thing happening again.
- Provide additional training for staff on the relevant process.

5.3 Financial Compensation

There are times when it is appropriate to offer financial compensation for service failures or mistakes we make. This may cover quantifiable financial losses, other financial losses or the stress and inconvenience that has been caused.

Factors we may take into account when deciding the overall amount include:

- The duration of any avoidable distress or inconvenience
- The seriousness of any other unfair impact

- Actions the complainant or we take which either mitigated or contributed to actual financial loss, distress, inconvenience or unfair impact
- The level of rent or service charges

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Where we agree compensation, we will where possible be clear with tenants on what we are compensating for and how we have concluded the amount of compensation.

In some cases, it is relatively straight-forward to quantify the amount of compensation that would be fair to pay in the circumstances, whereas in other cases it is less clear. We may therefore consider setting out a remedy that involves compensation under a series of different elements.

5.3.1 Quantifiable financial losses

Circumstances in which we may decide to compensate a complainant for a quantifiable financial loss could include:

- Where money is due to a complainant but has not been paid – for example, rent overpayments or works which we have previously agreed we would pay for.
- Costs which have been reasonably incurred by a complainant, which would not have been necessary if the service failure had not occurred – for example, payments to cover additional heating costs when we have failed to repair the heating.

- Decorating costs after repairs where 'make good' works have not been adequately completed.

We will ask for receipts for any financial losses that are claimed.

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We will not usually consider including interest in the calculation for the remedy, unless the period of delay was more than six months and the payment itself is more than £1,000. We would generally base the interest calculation on the average retail price index for the period in question.

We will not pay out of pocket costs incurred by a complainant if they have not given us the opportunity to rectify the matter first.

Where damage or alleged injury occurs because of our or our contractor's negligence, we will refer the issue to the Council's Insurance Team. This includes damage to tenants' belongings.

We will not reimburse a complainant for any legal or other professional fees, unless we consider that there are exceptional circumstances.

5.3.2 Unquantifiable Financial Losses

Sometimes it is apparent that there has been a significant financial loss to the complainant, but it is not always possible to quantify this.

Whilst it is generally reasonable to ask a complainant to provide evidence of the costs that they have incurred, there may be occasions where no such evidence is available.

Where we are satisfied that on the balance of probabilities, a complainant has incurred costs but has not been able to evidence this and it is not possible to provide a reasonable estimate, we may pay an amount in recognition of the fact that the complainant has incurred costs that would not have arisen had the service failure not occurred.

5.3.3 Other financial redress.

We may pay compensation in cases where there has been avoidable, inconvenience, distress, detriment or other unfair impact. Examples include:

Distress and Inconvenience

Complainants will often describe how they have been affected by the situation that has led to their complaint, for example in terms of the impact on their family life, use of their home, impact on their employment or on their health and emotional wellbeing. Some complainants will set this within the context of their mental and / or physical health and explain how our actions or inactions have affected them or exacerbated existing health conditions. Distress can include –

- Stress, anxiety, worry, frustration, and uncertainty.

- Raised expectations – where our actions or inactions resulted in a complainant reasonably believing that something would, or would not, happen.
- Inconvenience.
- A strong sense of having been treated differently to others for no apparent reason.

It can also include distress caused by delays in resolving matters or by poor complaint handling.

Time and Trouble

Financial compensation may be appropriate if it is found that the time and trouble incurred by the complainant in seeking to resolve their complaint was significantly more than would be reasonably expected due to poor complaint handling.

Examples of poor complaints handling include failing to progress or escalate a complaint on repeated occasions, failing to respond to reasonable contacts from the complainant or delays in responding to complaints.

6.0 COMPENSATION LEVELS

- 6.1 Our compensation levels are set in accordance with Housing Ombudsman guidance, with no maximum or minimal compensation levels. Each case will

need to be considered on its merits, with staff expected to use their discretion and decide what is fair.

This is not a prescriptive list and should never be treated as such. It is important that staff consider the cumulative impact of any service failures.

Awards of £50 to £250

Awarded where there has been a service failure which has had some impact on the complainant, but this was for a short duration and may not have significantly affected the overall outcome for the complainant. Examples could include:

- Repeated failures to reply to letters or return phone calls.

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- Not having regard to a complainant's preferred method of contact or contact requirements.
- Failure to meet service standards for actions and responses but where the failure had no significant impact.
- Incorrectly addressing correspondence (so as to cause offence / upset, but not a breach of data protection requirements).

The impact experienced by the complainant could include distress and inconvenience, time and trouble, disappointment, loss of confidence and delays in getting matters resolved.

Awards of £250 to £700

Remedies in the range of these amounts may be for cases where we find considerable service failure, but there may be no permanent impact on the complainant. Examples could include:

- Misdirection – giving contradictory, inadequate or incorrect information about a complainant's rights (for example in relation to decants, mutual exchanges, or preserved Right To Buy).
- A complainant repeatedly having to chase responses and seek correction of mistakes, necessitating unreasonable level of involvement by that complainant.
- A complainant being repeatedly passed between staff and / or teams, with no one officer or department taking overall responsibility or not taking responsibility for sub-contracted services.

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- Failure over a considerable period of time to act in accordance with policy – for example to address repairs; to respond to antisocial behaviour or to make adequate adjustments.
- Serious failures but which have already been recognised and resolved by landlord, including redress for actual financial loss.
- Repeated failure to meaningfully engage with the substance of the complaint, or failing to address all relevant aspects of complaint, leading to considerable delay in resolving complaint.
- Significant failures to follow complaint procedure, escalate the matter or signpost the complainant.

Awards of £700 and above

Remedies in the range of these amounts are used in recognition of service failures that have had a severe long-term impact on the complainant. Remedies in this range will be appropriate when there has been a significant and serious long-term effect on the complainant, including physical or emotional impact, or both. Examples of where we make remedies in the region of these amounts could include:

- A long stay in temporary accommodation due to mishandling of repairs
- Mishandling or partiality in an antisocial behaviour case leading to exacerbation of tenant relations .
- Erroneous or premature threat of eviction, where it is proven we acted outside our usual procedures.

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- Failure to make reasonable adjustments in accordance with our Reasonable Adjustments Policy.
- Failures leading to Environmental Enforcement Orders.
- Serious mishandling or misdirection leading to speculative loss, whereby on balance of probabilities it can be reasonably concluded that the complainant has suffered a financial loss, but it would be speculative to try and quantify any actual loss. Examples might include: mishandling of a Right to Buy / Acquire application leading to the complainant's mortgage offer expiring and the new mortgage offer being on less favourable terms.

7.0 MITIGATING / AGGRAVATING FACTORS

7.1 Mitigating factors

We will consider the extent to which the complainant's actions might have contributed to the situation in which they found themselves. Equally, the complainant may have been proactive in seeking to minimise the impact on themselves. Examples of when the complainant's own actions mitigate the extent of the compensation being considered might include:

- Failure to communicate clearly with us
- Failure to bring individual matters to our attention within reasonable timeframe
- Refusing help to make a coherent complaint
- Failing to respond to contact or repeatedly refusing to allow access
- Pursuing the complaint in an unreasonable or excessive way.

7.2 Aggravating factors

Awards should recognise the fact that the emotional impact experienced by an individual complainant is unique to them. Not all complainants will experience the same emotional impact in response to the same instance of service failure. This might be due to their particular circumstances or as a result of a vulnerability. Consideration of any aggravating factors could justify an increased award to reflect the specific impact on the complainant.

Examples of aggravating factors might include:

- The complainant's mental health condition (for example mishandling of ASB aggravates existing condition).

- Complainant with young children (for example an extended period in temporary accommodation as a result of repair delays causes significant inconvenience and upset).
- A complainant's disability (for example the daily impact of emergency decant as result of failure to comply with repairing obligations).
- Complainant with responsibility for dependent with disability (for example delayed repair response could have disproportionate impact)
- Any previous history of mishandling of the complainant's tenancy.

The above lists are not exhaustive. There may be occasions where the nature of the failures places the complaint within one range, but the number and duration of the failures cause an impact which justifies a higher amount of compensation.