

Housing Management

## Compensation & Redress Policy

April 2019

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## **2. Introduction**

The Royal Borough of Kensington and Chelsea (RBKC or the Council) is committed to providing a high quality service to all our customers at all times. We recognise however, that there are times when services do not meet our high standards and customers are inconvenienced as a result. Section 92 of the Local Government Act 2000 gives councils the power to remedy injustice arising from poor service. This policy sets out how this power will be administered. Where a complaint is justified, an apology will normally be sufficient to correct any inconvenience caused. However, the Council understands that where a complainant has suffered loss or injustice, other remedial action may also need to be considered, including financial compensation.

## **3. Related Documents**

- Complaints Policy (RBKC)
- Complaints Procedure (RBKC)
- Compensation & Redress Procedure (RBKC)
- Repairs Policy RBKC)
- Repairs Handbook (RBKC)
- Housing Ombudsman Compensation Factsheet  
<http://www.housingombudsman.org.uk>
- Decant Policy (RBKC)

## **4. Legal Context**

- The Secure Tenants of Local Housing Authorities (Right to Repair) (Amendment) Regulations 1997
- The Secure Tenants of Local Housing Authority (Compensation for Improvements) Regulations 1994
- Local Government Act 2000

## **5. Policy Statement**

- 5.1 This policy sets out Housing Management's approach to awarding compensation. If services fail, or fall below published standards, Housing Management will put the matter right and apologise.
- 5.2 Other than in exceptional circumstances or when linked to a formal complaint, claims for compensation will only be considered within three months of the issue coming to the resident's attention, or in line with statutory requirements.
- 5.3 The Council reserves the right to refuse to deal with claims for compensation, or to deal with them differently, if they are pursued unreasonably or if they can be handled more effectively in a different way.

- 5.4 The Council considers acceptance of compensation to be a full and final settlement of a case. Cases will not be reopened nor further compensation considered via the same or alternative process (i.e Formal Complaint) unless the circumstances of the original case have significantly changed or escalated.
- 5.5 Any payment or other form of compensation offered under this policy is not an admission of liability by the Council.

## **6. Housing Management's Approach**

6.1 Whilst each case will be assessed individually, the application of this policy promotes a consistent approach to resolving claims for compensation across Housing Management. This is to make sure that:

- the compensation process is reasonable and fair and treats all customers equally.
- problems are resolved quickly and efficiently.
- practical solutions are explored to address complaints and information gathered is used to learn and to improve service delivery.
- financial awards are in proportion with the loss and/or inconvenience caused and are made within clear guidelines.

6.2 Housing Management will consider a claim for compensation when:

- residents have been severely inconvenienced by the Council's actions.
- service delivery failure causes residents loss or major inconvenience.
- failure to follow Housing Management's policies has a detrimental effect on residents.
- appointments are missed.
- failure to identify the correct issue or carry out repairs in a satisfactory manner or complete repairs within agreed timescales causes inconvenience or loss.
- the Council is responsible for the loss of services which it provides to residents' homes, such as heating and/or hot water.
- damp, water leaks, neglect or similar, result in the loss of an amenity such as a room.

6.3 Where a resident owes money to the Council such as rent or service charges, the resident can choose to offset any financial compensation against the debt.

## **7. Compensation: Definitions**

Two categories of compensation are covered within this policy:

7.1 Statutory Compensation

These are payments which the Council is legally obliged to make and has no discretion over the amounts awarded.

## 7.2 Ex-Gratia Payments

These are awards the Council has no legal obligation to make, but has chosen to do so to compensate service users in certain situations.

## 7.3 Costs payable by the Council when residents have to be moved either temporarily or permanently are not included within this policy: see Housing Management's Decant Policy for details.

# 8. Statutory Compensation

## 8.1 The Right to Repair

This is a right given to secure tenants to ensure the completion of certain repairs quickly and easily. Small, urgent repairs are covered, which if not carried out within a specified period, are likely to cause damage to the health, safety or security of the resident.

### 8.1.1 Qualifying repairs must cost £250 or less and include repairs to:

- faulty lighting, socket or electrical fittings.
- blocked flues, or boilers.
- blocked sinks or toilets.
- leaking roofs, pipes, tanks or cisterns.

### 8.1.2 The full list of qualifying repairs is set out in the Compensation & Redress Procedure.

## 8.2 Compensation for Residents' Improvements

When a tenancy has been terminated, the Council may compensate the outgoing tenant for any authorized, qualifying, improvements made to their home on or after 1 April 1994. Refer to the Compensation & Redress Procedure for full details.

# 9. Ex-Gratia Payments

## 9.1 General Compensation Claims for Service Failure.

### 9.1.1 The Council is committed to delivering quality services and will consider all claims for compensation where it has failed to deliver these services appropriately or to the agreed standard.

### 9.1.2 Offers of compensation will not be made if the Council has taken reasonable steps to remedy any failure of service delivery that arose due to unavoidable circumstances, or if the service user prevents or delays the service delivery or has contributed in some other way to its failure.

9.1.3 In some instances, even though the Council may not have any obligation to award a payment of compensation to a resident or residents, the Council will consider a claim anyway. Each claim will be individually assessed, and the circumstances of the claim taken into account, including any damage, disturbance or inconvenience caused. This type of payment is subject to the agreement of a head of service. In determining the amount to award, as per the Ombudsman, the following factors will be considered:

- The complainant's own action(s)
- Quantifiable financial loss
- Loss of a non-monetary benefit
- Loss of value
- Loss of opportunity
- Distress
- Time and trouble

9.1.4 In some instances, a gesture of goodwill may be offered to acknowledge poor service, no service, or a service which was unreasonably delayed.

9.1.5 It may not always be appropriate to offer financial compensation and in some cases an alternative remedy may be sufficient. This includes:

- An apology or expression of regret for the inconvenience caused
- An explanation of how the situation which led to the complaint being made arose
- An assurance that the same situation will not occur again and an outline of the service improvements being implemented to ensure this
- An outline of the action being taken to put things right

## 9.2 **Compensation in Relation to Formal Complaints**

9.2.1 When a complaint is substantiated, there are circumstances where an ex-gratia payment is the most appropriate resolution, for example where:

- the Council has taken appropriate action but delayed doing so which has caused inconvenience to the complainant.
- there is no practical action that would provide a full and appropriate remedy.
- the complainant has suffered financial loss or has spent a significant amount of time and effort in making their complaint to the Council.

9.2.2 When a complainant raises a complaint with the Housing Ombudsman Service, having exhausted the Council's formal complaints procedure, the Council will pay any compensation and/or carry out any works and/or take all action to comply with the Housing Ombudsman's recommendations.

### **9.3 Compensation for Loss of a Room, Amenity or Service**

- 9.3.1 Compensation will be paid for the loss of use of a room, amenity or service, where something which is the responsibility of the Council, has gone wrong and the contractual deadline for completing the repair has passed.
- 9.3.2 No compensation is payable if the loss is due to planned works agreed in advance with the resident, unless the loss is for a longer period than agreed at the outset.
- 9.3.3 No compensation will be awarded if the loss of facility is caused by a utility supplier or the resident's own action or lack of action.

### **9.4 Damage to Decorations or Fixtures**

- 9.4.1 Where decorations or fixtures have been damaged as a result of repairs or improvements carried out by the Council or an agent acting on its behalf, the resident will be offered the choice to allow the Council to carry out the work, or decoration vouchers to carry out the works themselves.
- 9.4.2 Refer to the Compensation & Redress Procedure for details of the decoration allowance by room type.

### **9.5 Loss or Damage to Possessions**

- 9.5.1 Residents are advised to take out home contents insurance at the start of their tenancy to insure their personal possessions and decorations against damage or loss.
- 9.5.2 All liability claims against the Council should be made to the Council's Insurance Team using the Housing Liability Claim Form and will be dealt with outside this policy.

### **9.6 Claims for Injury or Alleged Negligence**

- 9.6.1 All claims for injury or costs incurred due to alleged negligence by council officers or agents acting on its behalf, should be referred to the Council's Insurance team, using either the Housing Liability Claim Form or via legal representatives such as solicitors or similar legal support services such as Citizen Advice Bureau. These cases will be dealt with outside this policy, by the Insurance Team. It is always recommended that you seek independent legal advice and support for personal injury or complex claims.

### **9.7 Lift failure**

- 9.7.1 Compensation is payable for lift failure when:
- there is no access to another lift in the same block and

- the lift has been out of service for one week or more.

9.7.2 Compensation will not be paid if a lift is unavailable due to vandalism.

## 9.8 Refunds: Heating

9.8.1 When the Council controlled heating supply fails during the recognized heating season (November 1 to April 30) for two consecutive days or more, Tenants can apply for a refund for heating costs. Refunds are based on the gross weekly charge. Refunds apply to tenants only, as leaseholders will receive a lower service charge to reflect loss of heating during the outage.

## 9.9 Refunds: Hot Water

9.9.1 A refund applies when a resident has a Council controlled hot water supply and has had no hot water for three consecutive days or more. Refunds are based on the gross weekly charge. Refunds apply to tenants only, as leaseholders will receive a lower service charge to reflect the loss of hot water during the outage.

## 9.10 Heating or Hot Water Compensation

9.10.1 Compensation is payable when the loss in supply lasts for three consecutive weeks or more as follows:

- for loss of heating for a landlord controlled system during the recognised heating season for residents
- for loss of hot water for a landlord controlled hot water systems for residents
- for loss of heating\* for an individual system for tenants
- for loss of hot water for a n individual system except where a working emersion heater is available for tenants

*\*Details of how the payments are calculated is set out in Appendix 1.*

## 9.11 Advance Compensation

9.11.1 If necessary, payments will be made in advance, to avoid creating financial hardship, particularly where residents use pre-paid key meters.

9.11.2 If the resident provides energy bills which show the cost of using electrical equipment supplied by the Council is higher than £2 per day, the additional cost will be refunded, subject to fair usage.

## 10. Appealing an Award for Compensation

10.1 The claimant can appeal the rejection of a claim for compensation or the level of compensation awarded by Housing Management, by making a formal complaint through the Housing Management complaints procedure, providing the claimant has not previously accepted the proposed compensation.



## **11. Third Party Responsibilities**

- 11.1 Where service breakdown is due to a third party such as a contractor working for the Council, the Council will pursue the service provider and will require them to pay compensation for their failure to provide services on time and/or to a satisfactory standard.
- 11.2 Where contractors do not have their own compensation policy, they will be expected to follow this policy and will be required to remedy the situation and settle any compensation payments via the Council, with the Council making settlement directly to the service user.

## **12. Equality and Diversity Statement**

- 12.1 The Council believes that equality and diversity are of fundamental importance to the service it provides to its customers and regardless of age, gender, belief, ethnic origin, disability or sexuality, everyone should be treated with respect. The Council treats everyone it houses, serves, employs and works with, fairly and encourages others to do the same.
- 12.2 In meeting the aims of this policy, the Council will provide information that is clear, accessible and in an appropriate format such as translated into another language, or in large print. Where appropriate, council officers will assist residents in making a claim for compensation, by helping to complete paperwork for example. This policy provides assurance that compensation is offered and calculated in a fair and consistent way.

## **13. Value for Money Statement**

The Compensation & Redress Procedure sets out the methods for calculating financial awards, to ensure consistency across all Housing Management service areas.

In keeping with the Council's responsibilities regarding the spending of residents' money, the Council will make sure that payments are not excessive. Furthermore, non-financial methods of redress will always be considered first and financial compensation will be offered as a last resort only.

## **14. Resident Involvement and Consultation**

In developing this policy, the Compensation and Redress Task and Finish Group, comprised of residents, has been consulted on its contents and feedback has been incorporated where appropriate.

## **15. The GDPR and the UK Data Protection Act 2018**

As part of the Council, Housing Management shares the commitment to ensure that a data is:

- Processed lawfully, fairly and in a transparent manner.
- Collected for a specific and legitimate purpose and not used for anything other than this stated purpose.
- Relevant and limited to whatever the requirements are for which the data is processed.
- Accurate, and where necessary, kept up to date. Any identified inaccuracies will be amended or removed without undue delay.
- Stored for as long as required, as specified within the Council's Retention Policy.
- Secured with appropriate solutions, which protect the data against unauthorised or unlawful processing and accidental loss, destruction or damage.

For further information about the Council's commitment to The General Data Protection Regulations (GDPR), please see the Council website at [www.rbkc.gov.uk](http://www.rbkc.gov.uk)

## **16. Monitoring, Review and Accountability**

- 16.1 The Housing Management Team will receive regular reports on the level of compensation being awarded in order to monitor the effectiveness of the process and ensure accountability for service delivery.
- 16.2 This policy will be reviewed every three years or sooner, in order to incorporate legislative and/or regulatory amendments, best practice developments, or to address any operational issues identified with the procedure.

## 17. Version Control

Version number	Purpose	Author	Date
V1	Initial draft circulated to HMT for feedback	Jane Jolly	21/9/18
V2	Updated with HMT feedback	Jane Jolly	08/10/18
V3	Updated with residents' feedback	Jane Jolly	19/12/18
V4	Resident feedback and minor amendments	Sheila Makokha	18/01/19
V5	Updated with Housing Ombudsman feedback	Sheila Makokha	08/02/19
V6	Updated, minor changes, RBKC Legal feedback and application of house style	Sheila Makokha	26/02/19
V7	Minor Changes	Sheila Makokha	01/04/19
V8	Discretionary Payments changes to Ex-Gratia payments and additional detail added Sections on heating/water/lifts added at 9.1.3	Amanda Johnson	02/04/19
V9	Minor changes	Sheila Makokha	02.04.19
V10	Minor changes	Sheila Makokha	08.04.19
V11	Minor changes and addition of Appendix 1.	Sheila Makokha Caroline Scott	22.04.19
V12	Minor wording changes throughout the policy to use active language.	James Perryman and Stephen Towmey	01/05/19
V13	Addition of 9.11 (Advance Compensation)	James Perryman	14/01/19

## Appendix 1:

### Ex-gratia compensation calculation methodology

Level of RBKC's responsibility	No material impact	Low impact	Medium impact	High impact
None	Nil	Nil	Nil	Nil
Partial	£10	£25	£100	£250
Full	£25	£50	£250	Up to £1000

### Lift failure

Compensation is payable for lift failure when:

- There is no access to another lift in the same block and
- The lift has been out of service for more than 7 consecutive days.

Compensation of £5 per week will be paid for each week that the lift is unavailable after 5 days failure. The payment will be £10 for vulnerable residents.

### Heating and Hot Water: Refunds and Compensation.

#### Refunds: Heating

Tenants request for a refund for heating when the Council controlled heating supply fails during the recognised heating season (November 1 to April 30) for 2 consecutive days or more. Refunds are based on the gross weekly charge. Refunds apply to tenants only, as leaseholders will receive a lower service charge to reflect loss of heating during the outage.

#### Refund: Hot Water

A refund applies when a resident has a Council controlled hot water supply and has had no hot water for 3 consecutive days or more. Refunds are based on the gross weekly charge. Refunds apply to tenants only, as leaseholders will receive a lower service charge to reflect the loss of hot water during the outage.

### Heating or Hot Water Compensation

Compensation is payable when the loss in supply lasts for 3 consecutive weeks or more as follows:

- for loss of heating\* for a landlord controlled system during the recognised heating season for residents
- for loss of hot water for a landlord controlled hot water systems for residents
- for loss of heating\* for an individual system for tenants
- for loss of hot water for an individual system except where a working emersion heater is available for tenants

<b>District heating and hot water system refunds</b>  Applies where landlord controlled heating supply fails during the recognised heating season (October to April)  Compensation will not be awarded outside of the heating season.	Application by the tenant accompanied with evidence actual loss and/or significance inconvenience.  If the communal system fails for more than 5 days, a refund of the heating and hot water charges will be made to the rent or service charge account.	Studios and 1 beds £2.40 per day  2 beds + £4.80 per day  These figures are based on the EDF standard price per kilowatt-hour to use replacement electric heaters.	Payments to tenants and leaseholders
<b>Individual heating and hot water system compensation</b>	Application by tenant to cover the costs of an alternative heating supply.	Studios and 1 beds £2.40 per day  2 beds + £4.80 per day  These figures are based on the EDF standard price per kilowatt-hour to use replacement electric heaters.	Payments to tenants