

Appendix 1

Mid Devon District Council

Tenant Compensation Policy

December 2021

Version Control Sheet

Title: Tenant Compensation Policy

Purpose: To review the Tenant Compensation Policy in accordance with good practice and relevant legislative requirements

Owner:

Date:

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Title	Date	Version Approved
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Mid Devon Housing

Compensation Policy

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1. Aims and Objectives

- 1.1 Mid Devon Housing (MDH) aim is to provide an excellent service to its tenants at all times, however, we recognise that there will be occasions when our tenants may suffer some disadvantage, inconvenience or loss as a result of our actions or mistake and that in some instances, we will give consideration to financial compensation or a goodwill gesture as the most appropriate form of redress.
- 1.2 This policy applies to tenants or residents of Mid Devon District Council. It covers both discretionary compensation, which relates to loss, damage or inconvenience due to a service failure and statutory (obligatory) compensation.
- 1.3 The aims of the Compensation Policy are:
 - To ensure a clear, fair and transparent approach to compensation for all tenants and residents.
 - To ensure consistency when calculating compensation.
 - To provide guidance on how and when compensation can be claimed.
 - Record and pay compensation promptly
 - Monitor compensation payments and spend

2. Policy Statement

- 2.1 MDH strive to provide excellent standards of service for our residents. We acknowledge that when these standards are not met, tenants can be inconvenienced or distressed, or have suffered a loss as a result of our action or inaction and that in some instances, compensation may be the most appropriate remedy.
- 2.2 Compensation is not automatic and will not apply where the service failure or mistake has not caused any inconvenience and has been easily and quickly remedied. The level of compensation should be reasonable, justifiable and proportionate to reflect value for money for all MDH tenants or residents.
- 2.3 Each case will be considered for compensation on an individual basis and take into account all relevant known circumstances and supporting evidence. All reports of loss or inconvenience will be investigated and where appropriate, compensation offered. Factors that should be taken into consideration when considered the level of compensation or goodwill gesture include:
- 2.4 Where the tenant has contributed to the failure in the service. This could be when there have been problems gaining access. MDH reserves the right to charge tenants £20 for missed appointments.
 - Costs have been incurred by the resident that would not otherwise have been incurred.
 - The level of stress or distress caused as a result of an action or inaction that has led to the claim of compensation. This will include the severity of the distress, the length of time involved and the number of people affected.
 - The amount of inconvenience experienced by the tenants and how much effort was required by them to resolve the problem.
- 2.5 Any compensation or goodwill gesture awarded must be appropriate and proportionate. To ensure consistency in the levels of compensation paid, the matrix

in **Supplement 4** sets out the maximum values that should be awarded. These amounts are based on the level of our responsibility and the impact on the resident. They are in line with guidance on compensation and redress, issued by the Housing Ombudsman Service.

3. Different types of Compensation covered by the Policy

There are two types of compensation; compensation that MDH is obliged to pay and discretionary compensation which we can choose to pay where circumstances warrant. We are obliged to award compensation under:

3.1 Statutory Compensation:

- Right to Repair
- Tenant Improvements
- Disturbance and Home Loss Payments
- Right to buy

3.2 Discretionary Compensation or Goodwill Gesture:

We may award discretionary compensation for the following (this list is not exhaustive):

- Poor complaint handling
- Delays in providing a repair or service
- Temporary loss of amenity
- Failure to meet target response times
- Failure to follow policy or procedure

3.3 This policy does not deal with certain claims for Compensation:

The policy does not cover the following claims:

- Claims that would normally be dealt with by our insurers
- Those covered by MDH's liability insurance
- Any claim that should be covered by a home contents insurance policy
- A claim for personal injury
- A claim for loss of earnings
- Where there is impending legal action

MDH will **not** consider a claim of compensation where:

- The loss or damage was caused by a tenant, household member or visitor and includes failure to report a repair promptly or keep an appointment.
- The fault was unforeseeable and/or caused by a 3rd party or MDH had no control over it, such as a water leak from a neighbouring property.
- Possessions are lost, stolen or damaged through no fault of MDH.
- Items which have been unavoidably damaged by improvement works, such as installation of central heating which has unavoidably left holes in the flooring to accommodate new pipework.
- Damage caused by condensation due to lifestyle.
- Service failure or damage is the result of extreme or unforeseen conditions such as weather.

- Loss of the supply of gas, electricity or water which is outside of MDH's control.
- 3.4 Tenants should ensure that they have sufficient home contents insurance to cover damage to their property through no fault of MDH.
- 3.5 This policy should be read in conjunction with Mid Devon District Council's Corporate Complaints and Feedback Policy

4. Legal Framework

- 4.1 MDH is governed by legislation and good practice relating to the payment of compensation. This is used to decide when and how much compensation will be payable. Compensation payable under legislation includes:
- Right to Repair – Common hold and Leasehold Reform Act 2002
 - Right to Compensation for Improvements – The Housing Act 1985 and the Secure Tenants of Local Authority Regulations 1994
 - Home Loss and Disturbance payments – Land Compensation Act 1973 as amended by the Planning Act 1991

5. STATUTORY COMPENSATION

Type of Compensation Payments:

5.1 Right to Repair

- 5.2 Under the Right to Repair Scheme, tenants have the right to be compensated if certain small, urgent or emergency repairs, costing less than £250, are not carried out within specific time scales. These are defined as 'qualifying' repairs under the Right to Repair Regulations 1994.

- 5.3 If MDH fail to carry out a 'qualifying' repair that has been reported, on two separate occasions within the published repair time period and the resident has allowed reasonable access to the property, a one-off compensation payment of £10, plus £2 for every day thereafter that the repair is not completed, up to a maximum of £50. A full list of qualifying repairs is available in **Supplement 1**

5.3 Mitigating Factors

Financial compensation would not be due if the tenant has done any of the following:

- Failed to inform MDH about works required to the property.
- Where tenant lifestyle has resulted in the property getting into disrepair.
- The tenant has damaged the property.
- The tenant has delayed works being done to the property either by restricting access or postponing appointments.

For more information on the Right to Repair Scheme, please visit:

www.legislation.gov.uk/ukxi/1994/133/made

6. Right to Compensation for Improvements

- 6.1 Under the Local Authorities (Compensation for improvements) Regulations 1994 or Section 100 of the Housing Act 1985, tenants may be able to claim compensation for

the improvements made, at the end of their tenancy. Providing the improvement is considered a 'qualifying improvement'.

6.2 Prior permission from MDH must have been obtained for a 'qualifying' improvement, and it must be made clear at the time of requesting permission that it would qualify as an improvement. For example, a kitchen may be on the list as a 'qualifying improvement', however MDH reserves the right not to deem it an 'improvement'. It is important that the tenant seeks advice, prior to work commencing, as to whether MDH would class it as a 'qualifying improvement'. Tenants can claim for the cost of materials and labour costs, but not for appliances or their own labour. The amount payable can be up to £3000 though claims under £50 will not be considered.

6.3 Payments will be adjusted for undue wear and tear or if any defects to the improvement exist at the end of the tenancy. Compensation is worked out based on the notional life of the improvement, divided by the cost of the improvement, minus the number of years left.

$$C \times \left(1 - \frac{Y}{N}\right)$$

C = Cost of Improvement

N = Notional life of improvement

Y = Number of years since completion

6.4 Compensation will not be paid to tenants who have exercised their Right to Buy or where the tenancy ends as a result of a Court Order for possession.

6.5 Any compensation will be paid at the end of the tenancy and will be offset against any sums owed to MDH.

6.6 Tenants can enquire about compensation at any point during their tenancy, but should apply for compensation at the same time as giving notice to end the tenancy. Tenants have 14 days from the end from the end of the tenancy to make a claim. The tenant will need to supply:

- Name and Address
- Details of improvements
- Evidence of permission obtained
- Evidence of cost of improvements
- The dates the improvement works started and finished

6.7 For more information on compensation for tenant improvements, please visit:

www.gov.uk/government/publications/landlord-and-tenant-law-compensation-for-tenants-improvements

6.8 A list of qualifying improvements is available in **Supplement 2** and the compensation calculation is available in **Supplement 3**

7. Statutory Home Loss and Disturbance Allowance

7.1 Where a resident is required to move permanently by MDH, compensation will be paid in accordance with the statutory Home Loss Regulation. This amount is set out in Section 30 of the Land Compensation Act 1973 and is reviewed annually. It is in

addition to reasonable compensation for disturbance and is only payable to secure/flexible tenants who have held their tenancy for at least 1 year. The payment will only be made once the permanent move has taken place and any monies owed to MDH will be deducted beforehand.

- 7.2 Decanting is the term used to explain the process when residents are required to move from their homes due to works being carried out that cannot be carried out whilst they are in residence. This includes when a resident has to move because their home is due to be demolished or disposed of, and when extensive structural or intrusive works are required. Please see our Decants policy for more details.

8. Right to buy

- 8.1 Tenants who have made an application to buy their home are entitled to claim compensation if the sale has not completed within our statutory timescales, as a result of our inaction.

Tenants will need to:

- Issue a Notice of Delay to officers giving one month in which to resolve the delay.
- A further Operative Notice of Delay must then be issued by the tenant if the delay is not resolved within a month.

- 8.2 Financial compensation

- 8.3 We will deduct the sum of the weekly rent amount x the delay period. For instance, if the rent is £78.60 a week and there has been an 8-week delay, we would take $£78.60 \times 8 = £628.80$ off the final purchase price.

9. Discretionary Compensation

9.1 Repairs

- 9.2 We know how important it is to tenant's that we help them to maintain their home and fix repairs as quickly as possible. When considering paying discretionary compensation we will consider:

- 9.3 Each claim for compensation is on an individual basis, taking into account all relevant circumstances, where documents and evidence have been supplied. If evidence has been requested and is not supplied, claims may not be considered.

10. Financial Compensation

- 10.1 Financial compensation may be appropriate for:

10.2 Loss of amenities or rooms

If we are unable to complete a responsive repair within the set response times, in operation at the time, the tenant may have to cope without the use of amenities and/or rooms. In such cases, compensation may be awarded and will be calculated on the amount of rooms which are unable to be used and the amount of rent payable.

- 10.3 For non-pecuniary losses, the Complaints Officer should follow the discretionary payment process set out within the document. Please see **Supplement 4**

11. Service Failure

- 11.1 Tenants are encouraged to feedback incidents where they are unhappy with the service that they have received. In such cases offering a small amount of compensation may be appropriate to recognise any inconvenience caused.

12. Temporary heating

- 12.1 In some circumstances it may not be possible to carry out a repair to heating systems during the first visit due to the availability of spare parts, or the system is beyond economical repair. In such circumstances we will provide tenants with temporary heaters. Tenants will be compensated for the cost of using each heater provided.

13. Missed Appointments

- 13.1 Tenants can claim compensation for financial loss if a pre-arranged appointment that has been confirmed in writing is broken by a member of staff or one of our contractors. On such occasions we will pay compensation, except in exceptional circumstances which are beyond the control of the Council, its officers, or appointed contractors.
- 13.2 We may ask tenants to provide evidence if they have suffered a financial loss.
- 13.3 Tenants will not be eligible for compensation if the tenant was advised that the appointment would not be kept 24 hours before the appointment and an alternative appointment was arranged within 7 working days.

14 Damage to property

- 14.1 Tenants can claim compensation for accidental damage to their property caused by our contractors or staff. In this instance, tenants may be required to provide us with photographic evidence.
- 14.2 We may, at our discretion, issue compensation to tenants as a result of decorations, furniture or personal items being damaged due to neglect by a member of staff or a contractor acting on our behalf, where it can be reasonably proven.

15. Distress, Time and Trouble

- 15.1 We may decide that through our actions or inaction, we have caused a tenant to experience distress, upset or inconvenience and as such may look to compensate them for this. We do not compensate for loss of earnings, but may consider for example that if a tenant had to take time off work, that this was an inconvenience.
- 15.2 If a good will gesture is offered managers should aim to tailor it to the individual and base each offer on the particular circumstances of the case.

16 Gesture of Goodwill

- 16.1 We reserve the right to choose, sometimes even without acceptance of fault, to offer a gesture of goodwill. This can take the form of a physical token or financial gesture. Such gestures of goodwill will be considered on a case by case basis, but should not normally constitute more than a value of £250. However, there may be occasions when this amount may be exceeded but this will be at the discretion of MDH.

17. Time and trouble

- 17.1 Our tenant may have had to go to extensive time and trouble to persuade us to revise our decision or recognise their complaint. In this instance it is appropriate to pay compensation in recognition of our inaction. If we have failed to follow our processes within the permitted timescales, tenants may be entitled to compensation or a goodwill gesture.

17.2 Mitigating Factors

Financial compensation would not be if the complainant had done any of the following:

- Failed to provide us with any information requested.
- Caused an unreasonable delay in any part of the process.
- Been abusive or threatening to our staff.
- Rejected a transfer offer which we consider reasonable.

18. Payments

- 18.1 Claims for compensation or a goodwill gesture, due to service failure can be made via a service request before it reaches a stage one complaint. The relevant Office or Service Lead will decide on a case by case basis the most appropriate way to pay compensation. If the tenant owes money to MDH, the compensation will be credited directly to their rent account.
- 18.2 MDH may not use compensation to pay a debt if the compensation is meant to be used for a specific purpose, e.g. to replace a damaged item. However, if part of the compensation awarded is for distress or inconvenience, MDH may use this part to offsets any debt.
- 18.3 If a tenant feels that the compensation payment offered has not been considered in line with this policy, they have the right to use MDH's Complaints Procedure.
- 18.4 If a tenant accepts an offer of compensation, they must notify us within 30 working days of the offer. If the tenant fails to notify us of their acceptance, we reserve the right to withdraw our offer of compensation.

19. Value for Money

- 19.1 The correct issue of compensation can have a financial and social benefit to both MDH and our tenants or residents. Failure to issue appropriate compensation and redress, that is not appropriate or proportionate, can impact in our overall customer satisfaction.

20. Related Policies

- Corporate Complaints and Feedback Policy
- Complaints Procedure
- Repairs Policy and Procedure
- Decant Policy

21. Appeals / Disputes

- 21.1 Tenants have a right to dispute or appeal the compensation decision if they feel that MDH has not met its legal or statutory requirements, or if there is evidence that there has been a service failure.
- 21.2 Disputes can be dealt with informally by phone, email or letter, should a Tenant wish to discuss this with their Neighbourhood Officer or a Repairs Officer. Disputes can be formally dealt with as a service request. First time disputes or appeals cannot be dealt with as formal complaints in the first instance.

22. Review

This policy will be reviewed every 3 years, unless there is a change in legislation or regulation.

Supplement 1

Right to Repair

Tenants will be eligible for compensation under the Right to Repair if MDH fail to carry out the repair within the specified time, and after a further request again to complete the work within the specified time period.

Qualifying Repairs:

Defect	Prescribed period (in working days)
Total loss of electric power	1
Partial loss of electric power	3
Unsafe power or lighting socket, or electrical fitting	1
Total loss of water supply	1
Partial loss of water supply	3
Total or partial loss of gas supply	1
Blocked flue to open fire or boiler	1
Total or partial loss of space or water heating between 31 st October and 1 st May	1
Total or partial loss of space or water heating between 30 th April and 1 st November	3
Blocked or leaking foul drain, soil stack or (where there is no other working toilet in the house) toilet pan	1
Blocked sink, bath or basin	3
Tap which cannot be turned	3
Leaking from water or heating pipe, tank or cistern	1
Leaking roof	7
Insecure external window, door or lock	1
Loose or detached bannister or hand rail	3
Rotten timber flooring or stair tread	3
Door entry phone not working	7
Mechanical extractor fan in internal kitchen or bathroom not working	7

Supplement 2

Right to Compensation for Improvements

Tenants have a statutory right to claim compensation at the end of their tenancy for 'qualifying improvements' they have carried out to their home.

The 'qualifying improvement' must have been started on or after 1 April 1994

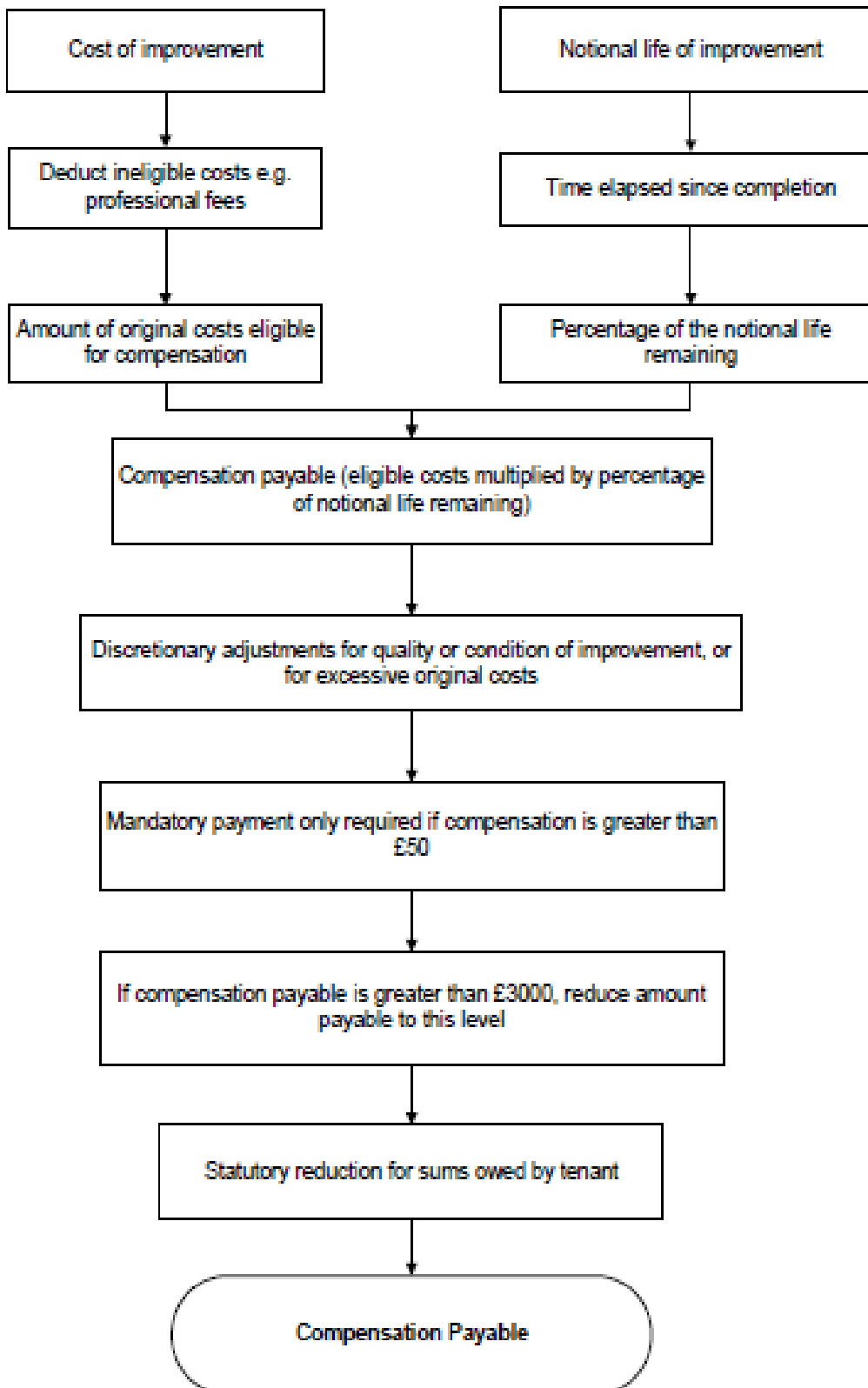
Qualifying improvements that **may be** eligible for compensation are:

- bath or shower
- wash hand basin
- toilet
- kitchen sink
- storage cupboards in bathroom or kitchen
- kitchen work surfaces
- central heating or water heating
- thermostatic radiator valves
- insulation of pipes, water tank or cylinder
- loft or cavity wall insulation
- double glazing, secondary glazing or other window replacement
- draught proofing of external doors or windows
- re-wiring or the provision of power and lighting or other electrical fittings including smoke alarms,
- security measures (excluding burglar alarms)

*Internal decoration **does not** qualify for compensation.*

Supplement 3

CALCULATION OF COMPENSATION PAYABLE



Supplement 4

Discretionary Payments

The Complaints Officer may authorise compensation, up to a maximum of £250. Higher payments must be authorised by a manager.

Compensation payments for delay and distress will be made based on the level of MDH's responsibility for the loss or inconvenience and the impact on the resident.

On occasions, MDH has the right to use discretion when awarding an amount, other than that stated in the matrix.

Discretionary payments include:

- Unacceptable delays in providing service which have resulted in serious distress or inconvenience to the tenant
- Unacceptable responses to upheld or partially upheld complaints which have caused distress, dissatisfaction or inconvenience
- Where a tenant has incurred additional costs as a result of a failure in service

The matrix sets out the maximum payment that can be made:

Level of Mid Devon Housing Responsibility	Impact on Tenant			
	No Impact	Low Impact	Medium Impact	High Impact
None	£0	£0	£0	£0
Partial	£0	£25	£175	£250
Full	£10	£50	£250	£500

Low impact: The complaint has been upheld but there has not been significant inconvenience or distress caused. The impact has been no more than a reasonable person could be expected to accept and the compensation is a token in acknowledgement of MDH's responsibility.

Medium impact: Inconvenience and/or distress has clearly been caused as a result of a failure in service. A repeated failure of a low impact event could result in the impact being increased to a medium impact.

High impact: A serious failure in service has taken place. This could either be due to the severity of the event or a persistent failure has occurred over a prolonged period of time or an unacceptable number of attempts to resolve the complaint have failed.

Goodwill gestures: Any member of staff is able to offer a goodwill gesture to residents who have received a poor service or have suffered inconvenience. Payments should take into account the level of stress, anxiety, frustration, uncertainty and inconvenience caused. This will include the severity, length of time, number of people affected and their individual circumstances.

If a tenant wishes to accept a compensation offer, they must do so within **30 days** of the offer.