



**SOUTH  
KESTEVEN  
DISTRICT  
COUNCIL**

## Rural and Communities Overview and Scrutiny Committee

1 July 2021

Report of: Councillor Robert Reid

Cabinet Member for Housing and  
Property



# Housing Service Compensation Policy

In common with all social landlords, the Council is obliged in some circumstances to make payments to tenants or leaseholders to compensate them for loss or inconvenience. This report seeks the input of the Committee into the principles on which a Housing Service Compensation Policy could be based. Any Policy would be intended to provide clarity of the circumstances, both discretionary and statutory, where it is appropriate such payments will be made.

### Report Author

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Corporate Priority:	Decision type:	Wards:
Housing that meets the needs of all residents	Key	All Wards

Reviewed by:	Chris Stratford, Interim Assistant Director of Housing	20 June 2021
Approved by:	Andrew Cotton, Director of Housing and Property	20 June 2021
Signed off by:	Councillor Robert Reid, Cabinet Member for Housing and Property	21 June 2021

### Recommendation (s) to the decision maker (s)

1. That Committee notes the content of the report, the examples of compensation that may be paid, and provides comment as appropriate.
2. That the Committee, subject to suggested amendments, indicates its support for further work on a Housing Service Compensation Policy and associated processes prior to submission to Cabinet.

# 1 The Background to the Report

- 1.1 The Council is committed to ensuring that it meets all housing-related statutory compensation payment obligations. The Council also recognises that there may be occasions where our service fails and a discretionary compensation payment may be appropriate, such as where inconvenience is caused or as a gesture of goodwill.

## 2 Issues for Consideration

- 2.1 This report sets out the grounds and basis upon which compensation may be awarded in relation to our statutory obligations and discretionary payments. Committee may wish to consider and discuss the following:

- Statutory compensation, which includes Right to Compensation for Improvements; Right to Repair; and Home Loss payments;
- The discretionary compensation examples listed below, and whether this is consistent with issues raised by constituents.
- Suggested exclusions from the Policy; and
- Note the role of the Housing Ombudsman in awarding compensation.

### **Statutory Compensation**

- 2.2 Statutory compensation is defined as those obligations created under legislation, rather than from a contractual relationship. Statutory compensation payments are applicable to tenants of the Council and are listed below:

#### Right to Compensation for Improvements

- 2.3 Secure tenants of the Council have the right to carry out improvements subject to Landlord consent. Tenants must not carry out any improvements without the written consent of the landlord. However, consent must not be unreasonably withheld and if it unreasonably withheld it is to be treated as given. This compensation is only paid to a qualifying person and for certain qualifying types of improvement.

#### Right to Repair

- 2.4 Secure and introductory tenants of the Council who need repairs to their homes can use the right to repair scheme should we fail to carry out a 'qualifying repair' within a certain time period for repairs costing £250 or less. Under the right to repair scheme the tenant may be able to make us appoint a new contractor, and/or be paid compensation.

#### Home Loss Payment

- 2.5 Should the Council require tenants to be permanently moved from their home due to improvements, re-development, or demolition then they may be entitled to a statutory home loss payment. The amount of home loss payment is set by the Government.

#### Statutory Disturbance Payment (Permanent Decant)

- 2.6 The Council is required to reimburse tenants for all reasonable costs they have actually incurred because of having to move permanently due to demolition, redevelopment or improvement works.

## **Discretionary Payments**

2.7 Discretionary payments are defined as those which do not arise from obligations imposed by law. For example, to cover loss, inconvenience caused and/or as a gesture of goodwill. They can include:

- quantifiable loss payments (where people can demonstrate actual loss)
- discretionary payments (for time and trouble/distress and inconvenience)

2.8 Listed below are some common examples, with suggested policy positions in italics, and Committee is asked to consider whether this list is consistent with issues raised by constituents:

### Communal Services

2.9 Where tenants pay for a support service or service to a communal area, and the Council have failed to provide that service, we will recompense tenants with a refund proportionate to the amount of time for which they were without the service.

### Loss of Use of Rooms

2.10 Should a tenant lose the use of a room due to it being unusable for reasons that pose an imminent health and safety risk, and repair times have been exceeded, the Council will offer a goodwill payment as a proportion of the payable weekly rent for the period during which the loss is experienced.

### Loss of Use of Facilities

2.11 For loss of space and/or water heating, and tenants have been provided with an alternate source of heating and/or hot water, the tenant will be compensated at £4 per day to cover the difference in the running costs for their usual hot water/heating system and the temporary source provided. Compensation is only payable if the fault has not been rectified within the Council's repair timescale and is calculated from the day after the repair target date up until the date either a temporary or permanent repair is completed.

### Loss of Earnings

2.12 Under the terms of the Council's tenancy agreements, tenants must allow access to their homes for repair work to be carried out which may result in some tenants having to take time off work. The Council will not compensate for loss of earnings in these circumstances.

### Discretionary Disturbance Payment (Temporary Decant)

2.13 The Council will meet all reasonable costs incurred as a direct consequence of any temporary move (decant).

### Goodwill Payment

2.14 A discretionary payment can be made solely as a gesture of goodwill, for example to reflect inconvenience caused.

### **Situations where compensation would not be considered:**

2.15 There are some situations where compensation should not be considered, for example:

- claims for personal injury;

- claims for damage caused by circumstances beyond the Council’s control (e.g. through storm or flooding)
- problems caused by a third party not working for the Council; and
- problems resulting from lifestyle choice (e.g. damp and mould) or tenant failure to act reasonably (e.g. refusing to allow access).

### **Housing Ombudsman**

- 2.16 The Housing Ombudsman Service is set up by law to look at complaints about registered housing organisations (local authorities and housing associations).
- 2.17 The Housing Ombudsman can only order compensation when they have found that there has been maladministration and will consider the following:
- actual, proven financial loss sustained as a direct result of the maladministration or service failure, and/or
  - avoidable inconvenience, distress, detriment or other unfair impact of the maladministration or service failure.

### **Budget Implications**

- 2.18 Any compensation in relation to the Council’s landlord function can only be financed within the resources of the Housing Revenue Account.
- 2.19 Generally, compensation payments to tenants can and should be offset against any housing debts owing to the Council, including rent arrears, or re-charges for rectification of damage. Following the offset, any balance remaining will be paid direct to the tenant. This would not be appropriate where the compensation was in respect of a quantifiable loss (i.e. where actual financial loss had occurred).
- 2.20 Committee may wish to note that in the financial year 2020/21 the total compensation paid to Tenants across the Housing Service is as follows:
- Payment in respect of Technical Services Works budget - £20,585.
  - Payment from the Technical Services Repairs budget - £17,108.
  - Payment made upon decision from the Ombudsman - £50 from Housing Management.
- 2.21 Compensation does not have to in all instances be in the form of a payment. It can include practical actions (such as offering to undertake repairs or redecoration which would otherwise be a tenant’s responsibility) and gestures of goodwill (e.g. vouchers, chocolates, flowers).

### **Other considerations**

- 2.22 Where compensation is as a result of service failure and loss, any offer of compensation should be accompanied by an apology; an explanation as to how the failures in service occurred; a demonstration of learning; and a commitment to making service improvements.

## **3 Consultation and Feedback Received, Including Overview and Scrutiny**

- 3.1 Any draft compensation policy will be drafted in accordance with the latest statutory obligations, regulatory requirements and best practice recommendations. Other consultation is covered in Section 7 – Next Steps.

## **4 Available Options Considered**

4.1 There are two options that can be considered:

4.1.1 Option 1 - Do nothing. This would entail us leaving as current and carrying on in the same way with no compensation policy in place. This is not advised as there are no perceived benefits of doing so and imposes a greater risk of non-compliance with our statutory obligations and increases the likelihood of a service failure becoming a formal complaint.

4.1.2 Option 2 - Approve and implement a compensation policy. This is the viable option as the main benefits are that the policy will provide clear guidance on the Councils arrangements for the payment of statutory and discretionary compensation.

## **5 Preferred Option**

5.1 Option 2 is the preferred option due to the benefits it offers. The reasons for this are as detailed in Section 5 of this report. The input of Overview and Scrutiny Committee is helpful in adding value to the production of a Policy for Cabinet's consideration.

## **6 Reasons for the Recommendation (s)**

6.1 A Compensation Policy, developed with Committee input and following tenant consultation, will provide clear guidance and consistency:

- on the payment of statutory compensation;
- on situations where the payment of discretionary compensation is appropriate;
- and reduces the likelihood of a challenge through the courts and the Upper Tribunal (Lands Chamber); and
- recognises the Councils commitment to putting things right where there is a service failure.

## **7 Next Steps – Communication and Implementation of the Decision**

7.1 Further work with key stakeholders, including the Finance Service to ensure budgetary management is clear, and that the Council's financial systems are configured to allow suitable controls and processes are in place prior to the adoption of any Policy.

7.2 Appropriate consultation with the Council's tenants and leaseholders, in line with their statutory rights.

7.3 Submission of a final Policy for Cabinet's consideration.

## **8 Financial Implications**

8.1 From a finance perspective, there is further work required in respect of this draft proposal before it can be introduced. There is currently no specific budget to fund compensation payments so this needs to be calculated and approved before the Policy can be introduced. The impact of introducing the compensation policy including the calculation criteria, the payment process and the impact on any tenant rent accounts requires further consideration and the necessary approval procedures will need to be introduced to ensure proper governance arrangements are followed. In the event that the tenant is in rent arrears or owe other debts to the Council then no compensation payment should be made directly but used to reduce the debt owed.

**Financial Implications reviewed by: Richard Wyles, Interim Director of Finance**

## **9 Legal and Governance Implications**

- 9.1 It is considered best practice to have a compensation policy and the Housing Ombudsman recommends having such a policy. Members should consider the wording of the policy to ensure the policy wording is clear and unambiguous, in order to minimise any disputes about when payments may be due.

**Legal Implications reviewed by: Shahin Ismail, Monitoring Officer**

## **10 Equality and Safeguarding Implications**

- 10.1 The compensation policy will ensure equality through consistency in decision making.
- 10.2 There are no safeguarding issues.

## **11 Risk and Mitigation**

- 11.1 The Council's risk will be reduced through the development and approval of a compensation policy by ensuring compliance with our statutory and regulatory obligations.

## **12 Community Safety Implications**

- 12.1 There are no community safety implications.

## **13 How will the recommendations support South Kesteven District Council's declaration of a climate emergency?**

- 13.1 There are no climate implications.

## **14 Other Implications (where significant)**

- 14.1 None

## **15 Background Papers**

- 15.1 None

## **16 Appendices**

- 16.1 None

<b>Report Timeline:</b>	Date of Publication on Forward Plan (if required)	N/A
	Previously Considered by:	N/A
	Final Decision date	14/09/2021