Compensation and redress policy

# Introduction

* 1. This policy sets out guidance on applying a remedy, including the payment of compensation, for any officer investigating a complaint on behalf of Medway Council Housing Services and has been drawn up in line with the Housing Ombudsman guidance.
  2. The council is committed to always providing a high quality of service to all its customers and aim to resolve any issues before the need to make a claim for compensation arises. However, we recognise there are times when our services do not meet the high standards we set ourselves and as a result customers can become inconvenienced. The Council will consider claims outside of the scope of this policy, in conjunction with claims of negligence via the Councils Risk Management and Insurance Team.
  3. In awarding compensation, Medway Council Housing Services must consider whether any statutory payments are due, if any quantifiable losses have been incurred, the time and trouble a resident has been put to as well as any distress and inconvenience caused.
  4. This policy should be read in conjunction with the Councils Corporate Complaints procedure which may be used by customers where service failures arise.

# Purpose

* 1. The purpose of this policy is to ensure:
     1. Practical solutions, not just compensation, are explored fully to resolve a situation
     2. Where financial payments are appropriate, they are proportionate to the loss or inconvenience caused
     3. All customers making a claim are treated in a fair and equal way
     4. Any financial payments are considered against clear guidelines.
  2. Offering compensation can help reduce dissatisfaction and resolve the complaint. However other outcomes must also be considered. The consideration of whether compensation is appropriate, and the decision made will be recorded with each complaint upheld either partially or fully.

# Scope

* 1. This policy applies to all rented property owned by Medway Council Housing Services and all qualifying tenure types.
  2. In general, we will deduct any arrears or money owed to Medway Housing Services from the compensation prior to it being paid to the resident.
  3. The Compensation Table on page XX can be used for other areas of Housing Service operations as guidance where compensation may be applicable.
  4. This guidance can be used as a guide for other Medway Council Housing Service Departments where complaints have been partially or fully upheld.

# Legislation and Guidance

* 1. External
     1. Local Government Act 1999
     2. The right to repair compensation
     3. Local Government and Housing Act 1989
     4. The Secure Tenants of Local Authorities (Compensation for Improvements) Regulations 1994
     5. Housing Act 1996
     6. Housing and Urban Development Act 1993
     7. Data Protection Act 2018
     8. GDPR 2018
     9. Localism Act 2011
     10. Home, disturbance, and Loss of Amenity
     11. Land Compensation Act 1991
     12. Social Housing White Paper
     13. Housing Ombudsman Complaints Handlers Code
     14. Housing Ombudsman Guidance on Calculating Financial Redress
     15. Right to Repair
  2. Internal
     1. Corporate Complaints Procedure
     2. Medway Council Tenancy Agreement(s)

# Policy

* 1. Before financial awards are approved, consideration will be given to a range of remedies that may be appropriate. It is good practice to consult with the complainant to find out how they would like things put right. The following list is not exhaustive, but ‘putting things right’ could include:
     1. An apology
     2. An explanation giving a full answer to all points raised in the complaint
     3. An assurance that every effort will be made to ensure the same thing does not happen again. This must be matched by action and monitoring of the complaint
     4. Action taken to put things right – demonstrable action to show that complaint has been taken seriously
     5. Where appropriate, a review of policies and procedures
     6. Staff guidance or training
     7. Appropriate disciplinary action
     8. Financial compensation

## Discretion

* 1. We recognise that each complaint needs to be considered on its individual merits, and that discretion and common sense need to be applied whilst using this policy. We may deal with a compensation request differently where individual circumstances apply. Any discretion will be applied fairly and appropriately, and all complaints will be progressed as far as possible to maximise the opportunity to resolve a complaint.

### Exclusions

* 1. This policy does not apply to:
     1. Issues that are, or have been, subject to legal proceedings
     2. Liability issues that are subject to an insurance claim
     3. Any claim that should be covered by a home contents insurance policy, including damage through flood or fire to your belongings such as floor coverings
     4. Claims for personal injury
     5. Claims for loss of income
     6. Complaints and compensation requests raised after 12 months from the incident/issue arising
     7. Complaints and compensation requests that have already been considered

### Compensation categories

* 1. **Mandatory**: This applies to disturbance or home loss, where payments will be made to compensate where you lose the right to rent your home, or to compensate reasonable expenses incurred in being re-housed, either on a temporary or permanent basis.
  2. **Quantifiable loss:** Where you can demonstrate actual loss as a result of our actions or omissions, or those of a third party working on our behalf
  3. **Discretionary:** Goodwill gestures and payments may be made when there has been a failure of service which has caused delay, distress, or inconvenience.

### Examples of when we may choose not to offer compensation include

* 1. failure by the complainant to communicate clearly with us
  2. failure to bring individual matters to our attention within reasonable timeframe
  3. refusing help to make coherent complaint
  4. failing to respond to contact from us
  5. the dispute is about repairs, but a complainant has repeatedly refused to allow us or our contractor(s) access to inspect the property and assess the extent of works needed
  6. where a complainant’s behaviour in pursuing their complaint becomes unreasonable, such as pursuing the matter in an unreasonable or excessive way.
  7. where the loss or damage was caused by the complainant, another household member or visitor to the property
  8. where the fault was unforeseeable and/or caused by a 3rd party or Medway Council Housing had no control over it, such as water leaking from a neighbouring property (unless we had already been alerted to this and had not resolved it promptly)
  9. personal possessions are lost, stolen or damaged through no fault of Medway Council Housing or its contractors
  10. service failure or damage that is the result of extreme or unforeseen conditions, such as the weather
  11. loss of supply of gas, electricity or water that is outside of Medway Council Housing control, such as a failure by the utility provider

### Compensation amounts

* 1. Notwithstanding any statutory legislation which governs the amount of compensation the Council should pay. Below are the guidelines on the amount of compensation and circumstances where it will be paid:

### Mandatory – Right to Repair

* 1. The Council will honour the Right to Repair provisions of section 121 of the Leasehold Reform and the Housing and Urban Development Act 1993.
  2. The Council is required to comply with the right to repair scheme, which gives residents the right to be compensated if certain small, urgent, or emergency repairs likely to affect their health, safety, and security costing less than £250 are not carried out within specific time limits. These are defined as ‘qualifying repairs’ under regulations issued under the above acts. Details of the right to repair will be published in the tenants’ handbook.
  3. Where the Council fails to carry out any qualifying repairs within the prescribed timescales and reasonable access has been provided, compensation will be paid at a rate of £10 for the first day, and £2 for every subsequent day the repairs are not carried out up to a maximum of £50. Payment will not be made if the resident has failed to allow contractor access, or the repair is not completed because of matters outside of the Councils control i.e., extreme weather conditions. Appendix A – provide details of qualifying repairs.

### Quantifiable Loss

* 1. If a complaint investigation finds that a resident is out of pocket as a direct result of Medway Council Housings actions or omissions, then we will consider compensation to offset the losses. This could include (but is not limited to):
     1. Increased heating bills due to disrepair
     2. Having to pay for alternative accommodation or takeaway food
     3. Paying for cleaning
     4. Carrying out your own repairs where it is proven that we have failed to carry out our obligations
     5. Replacement of lost or damaged possessions
  2. We will not cover costs if the resident has:
     1. Not notified us of the issue
     2. Not given us reasonable time to rectify the issue
     3. Refused us access to the property
     4. Refused our offer to rectify the issue
  3. The residents will need to provide evidence of the costs incurred, such as a receipt, paid invoice, or bill, within 8 weeks of the request

### Discretionary

* 1. **If you cannot use a room in your home**
  2. We will pay you compensation if we have not carried out work that is needed and your room is unsuitable for living in within our advertised standards. This only applies if you have not caused damage to the room yourself, and you have allowed us to carry out the required work. The payment will be calculated by dividing the number of rooms in your home by the amount of full rent you pay.
  3. For example, if your rent is £50 a week and you have five rooms in total, we would divide £50 by 5, giving £10 a room for every week that it is not usable.
  4. We may offer you temporary housing. This would be instead of compensation.

### Failure to provide a service where a service charge has been paid

* 1. If we fail to provide a service for more than 14 days (or the number of days appropriate for a particular service) the level of the compensation will be the same amount that you paid for the service for the length of time that we failed to provide it; plus, a single payment of £10.

### Serious disturbance and inconvenience in major works

* 1. In most cases, the Council will plan major work and agree a disturbance allowance’ (an amount of money we give the customer because we have disturbed your planned day-to-day activities) with you before the work takes place. We will pay you compensation if you are affected by unplanned work or emergency work that causes serious disturbance.
  2. This will be calculated based on the length of the disruption, the impact it has had on the use of utilities such as heating and hot water.

### Loss of heating and hot water

* 1. Between 31 October and 30 April, if you are without heating for a period of longer than 3 working days, we will provide compensation of £15 per day from day 4, up to a total value of £150. This includes the cost of using any temporary heating that we provide.
  2. Between 31st October and 30th April, if you are without hot water for a period of longer than five working days, from day 6 we will provide compensation of £5 per day, up to a total value of £50.
  3. The provision of temporary heating will be reviewed on a case-by-case basis and will be influenced by the makeup of the household (for example, households with elderly, disabled, or children under the age of 12).

### All other discretionary and compensation payments

* 1. Each case will be considered for compensation on an individual basis and consider all known circumstances and supporting evidence. We will work on evidence and facts and will generally not make any compensation awards based on the belief of what might have happened. All reports of loss or inconvenience will be investigated. Factors that will be considered when the level of compensation is considered include:
     1. Whether you have contributed to the failure in service. This could be when there have been problems gaining access due to your availability, or delays in reporting the problem.
     2. The level of stress or distress caused as a result of action or inaction by Medway Housing Services or its contractors. This will include the severity of the distress, the length of time involved, and the number of people affected.
     3. The amount of inconvenience (time and trouble) you have experienced and how much effort was required by you to resolve the problem.
  2. Compensation payments for delay and distress will be made based on the level of Medway Housing Services responsibility for the loss or inconvenience and the impact on you. This matrix sets out the maximum payment that can be made. These payments may be in addition to another loss payment.

### Compensation table based on the impact

**\*this table is to act as a guide:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Level of our responsibility | No impact | Low impact | Medium impact | High impact |
| None | £0 | £0 | £0 | £0 |
| Partial | £0 | £25 | £100 | £250 |
| Full | £10 | £50 | £250 | £500 |

* 1. **Low impact** – your 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 to acknowledge Medway Housing Services responsibility.
  2. **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 lead to it being increased to a medium impact.
  3. **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.

### Compensation notes

* 1. Compensation will typically be awarded only when the complaint investigation has concluded.
  2. In general, we will deduct any arrears or money owed to Medway Housing Services from the compensation prior to it being paid to the resident.
  3. The amounts in the Compensation Table can be influenced by other outside factors such as, compensation amounts paid by Contractors/Services who are acting on behalf of Medway Council Housing Services. In such cases it may be decided that payments made by such services are sufficient to redress any complaints upheld.

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Authorisation of compensation payments

* 1. Authorisation levels for compensation are as follows:
     1. £10 to £250 – Departmental Agreement
     2. £250 to £5,000 – Head of Service
     3. £5,000 to £10,000 – Director
     4. Over £10,000 – Cabinet

Housing Ombudsman

* 1. This compensation policy does not apply where a resident has made a claim for compensation via the Housing Ombudsman. In such cases the Council will pay compensation as directed by the Ombudsman.

# Role, responsibilities, and authority

* 1. The Assistant Director of Physical and Cultural Regeneration retains the overall responsibility for the implementation of this policy.
  2. The Head of Housing is responsible for the operational delivery of this policy and the associated procedures. This includes responsibility for monitoring and reviewing, staff awareness and training, policy development and communication to tenants.

# Monitoring, review, and evaluation

* 1. This policy will accompany the Councils corporate complaints procedure.
  2. Payments of compensation and redress will be documented and monitored through the compensation policy.
  3. Regular monitoring will take place to ensure that Housing Services is dealing with applications for compensation for improvement work in line with this policy. The results will be used by Housing Services to inform future policy review in this area and drive up service standards. All reviews will consider whether:
     1. The current policy adheres to legislative and regulatory requirements, and reflects current good practice.
     2. The aims and objectives of the policy being met.
     3. The current policy outcomes meet the needs and aspirations of our diverse customer base.
     4. Service users are aware of and understand the policy and believe it to be consistent and fair.
     5. The service offers value for money.
     6. Partnership arrangements are working effectively.
     7. This policy will be reviewed on a biennial basis or in line with legislative or regulatory changes.

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Appendix A

Qualifying repairs for statutory Right to Repair scheme.

**Repair prescribed period in working days**

| Type of repair | Days |
| --- | --- |
| Total loss of electric power | 1 |
| Partial loss of electric power | 3 |
| Unsafe power, 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 31st October and 1st May | 1 |
| Total or partial loss of space or water heating between 30th April and 1st November | 3 |
| Blocked or leaking foul drain, soil stack, or (where there is no other working toilet in the dwelling-house) toilet pan | 1 |
| Toilet not flushing (where there is no other working toilet in the dwelling-house) | 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 banister 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 |