

Compensation Policy

Housing Service

May 2021



1. Introduction

- 1.1 Folkestone & Hythe District Council (hereafter referred to as 'the Council') is committed to delivering a high quality customer service. We seek feedback from customers in a variety of ways, to gain a better understanding of their experiences and identify where we can improve. However, we recognise that sometimes our customers are not satisfied with the service they have received and there is a need to make this right.
- 1.2 When this happens a customer may make a complaint. Our **feedback and complaints policy** sets out our approach to managing complaints, including what steps we may take to redress or resolve the complaint and what customers can do if they are not happy with our response. In some instances, where a customer has suffered unreasonable levels of inconvenience or loss as a result of our failure, and no other solution will make this right, it may be appropriate to award compensation.
- 1.3 This Compensation Policy applies specifically to Folkestone and Hythe District Council tenants and leaseholders. It describes what may be offered as financial compensation and the circumstances in which this may be awarded. The policy sets out clear definitions and explains our approach to agreeing and awarding compensation when a complaint is serious enough to warrant it, or when no other viable option can be offered as suitable recompense.

2. Objectives and Approach

- 2.1 Our fundamental principle is to meet customer expectations and resolve complaints in a timely and appropriate manner. We will take whatever recourse necessary to redress failings and compensation will only be awarded in exceptional circumstances.
- 2.2 We recognise that tenants and leaseholders do not have an automatic right to compensation, except where there is a legal requirement for the Council to compensate (see section 3. Definitions). We will consider each case on merit.

2.3 The overriding objectives of this policy are to:

- Assess evidence of serious inconvenience or loss suffered by a tenant or leaseholder and identify when a complaint is serious enough to warrant compensation
- Consider each case for compensation and, if agreed, ensure that any payments made are fair, appropriate and consistent
- Use learning from compensation cases and complaints to improve our service to customers and do everything possible to avoid the same mistake happening again
- Demonstrate public accountability by making payments in line with statutory law and regulations
- Meet all legal and regulatory requirements, including delivering actions or compensation ordered by the Housing Ombudsman or Local Government Ombudsman as part of their findings following a complaint

3. Definitions

3.1 Compensation is payment, either obligatory or discretionary, of a sum of money in recognition of loss or detriment to a complainant. For the purpose of this policy, we use the following definitions as described by the Housing Ombudsman:

3.2 **Mandatory compensation:** Required by law where local authority tenants and leaseholders are entitled to compensation because of legislation e.g.

- **Home loss:** May be made to tenants who have lived in their property for a minimum of 12 months and are required to move home permanently as a result of redevelopment or demolition of their home.
- **Disturbance:** May be made to people who are required to move to another property temporarily or to people who have lived at a property less than 12 months and are required to move home permanently. This payment is for reasonable costs.

- **Improvements:** Where a tenancy is ending and the tenant has completed improvements to their home after 1 April 1994, the tenant may be entitled to compensation for these improvements. This does not apply to fixed-term tenancies.
- **Right to repair:** This covers specific repairs, known as 'qualifying repairs' which cost less than £250 and should be completed within a set time limit.
- **Disrepair:** This is compensation payable where it can be proven that an actionable statutory repairing duty has been breached and is based on quantifiable loss (see below). If any such breach is an actionable one and there is no defence to the claim; then legal costs may be sought by the Claimant.
- **Quantifiable loss payments:** These payments may be made where the landlord has failed to meet its obligations and comes with a caveat that any such costs must have been reasonably incurred and evidence of such loss has been provided.

Examples of where this compensation may be appropriate include: increased heating bills due to disrepair; having to pay for alternative accommodation or takeaway food; paying for cleaning or carrying out repairs where a landlord has failed to meet its obligations.

3.3 **Discretionary compensation:**

3.3.1 Discretionary compensation is made as a gesture of goodwill and not because the law requires the Council to pay compensation. As a general rule, discretionary compensation will only be considered where there are no practical actions identified that would remedy the adverse effect that has been caused by the service failure.

3.3.2 Any financial redress offered will be appropriate to the inconvenience suffered. Where appropriate, the matter may be referred to the Council's appointed insurers who will investigate and resolve the case. Examples of discretionary compensation include:

- **Unreasonable delays:** for example, in completing repairs, where the tenant has incurred additional costs as a result of our failure; a tenant being left without heating and hot water for more than 72 hours following reporting the problem, and staff or contractors missing appointments without prior notice or exceptionally good reasons
- **Poor service:** for example, failure to deliver a service within reasonable timescales
- **Payments ordered by the Ombudsman:** Where maladministration or service failure has been identified and the Ombudsman is satisfied that compensation is the most appropriate action that will put things right

4. Service Offer

4.1 Following an investigation of a complaint or compensation claim we will:

- Act reasonably, objectively and fairly when making a decision
- Consider each claim on its own merits
- Listen carefully and give due attention to the complainant's point of view
- Aim to reach an agreement with which the complainant is satisfied
- Apologise for our failure or mistakes and explain to the complainant what we will do to put things right; why we are doing it, and when it will be done.
- Keep them informed of progress and let them know what the complainant should do if they remain dissatisfied

4.2 Where financial compensation has been agreed this will be offset against any arrears of rent or service charges the claimant of the household owes the Council. In these cases, monies will be paid directly into the complainant/householder's account with us.

4.3 When all arrears have been paid, and/or where no further monies are owed to the Council, financial compensation will be made as a BACS payment to the complainant's nominated bank account.

4.4 We will ensure that the complainant understands that there is no automatic right to compensation in all cases and that escalation of a complaint cannot be based

on a request for increased compensation. However, we may reassess the level of compensation where the customer disagrees with the outcome.

- 4.5 When an agreement to award compensation has been reached by the Council we will write to the complainant with the following information:
- Summary of the complaint and the outcome
 - Reasons for the decisions made, including factors considered and any costs awarded for each factor
 - Details of outstanding matters and timescales by which they will be resolved
 - Details of how the payment will be administered
 - Details of how to escalate the issue to an independent Ombudsman if the complainant is unhappy with the outcome
- 4.6 We will seek the complainant's written agreement by way of either a signed letter or email to the Council to confirm agreement of the final award and payment arrangements, and ensure that all outstanding matters are resolved and compensation is paid within agreed timescales.
- 4.7 We recognise our tenants and leaseholders as individuals and understand that they may become frustrated when we do not meet their expectations. However, this service offer is based on customers treating our staff with respect and courtesy and complying with all reasonable requests made in an effort to resolve their concerns.
- 4.8 In turn, we will treat all complainants fairly and equitably, making any and all reasonable adjustments necessary to support them in making their complaint or claim for compensation.

5. Who can Claim Compensation?

- 5.1 This policy applies solely to the Housing Service provided by the Council. As such, any compensation identified within this policy may be claimed by tenants, leaseholders and other users of the Council's Housing Service. Where a main or joint tenant makes a claim, we will assume that they are acting collectively on behalf of their whole household.

- 5.2 We comply with the General Data Protection Regulation (GDPR) and are registered as a data processor. When a customer claims compensation under this policy, we will inform them that they are agreeing for the Council to use any personal information they provide for purposes connected solely with the complaint and that we may share relevant personal information to other people and organisations if we are required to do so by law or if they have given us permission to do so.
- 5.3 We will liaise with representatives of individual complainants, such as family members, carers and advocates, and operate within General Data Protection Regulations (GDPR). We will consider each case on its own merit but our general approach is to work with representatives where we have:
- Express written or oral permission from the complainant to deal with their representative about the specific issue or complaint
 - There is strong evidence that the complainant is unable to deal with us unaided and cannot give consent, and therefore is in the complainant's best interest for us to liaise with the representative

6. Receiving Compensation Claims

- 6.1 In all instances where a customer is dissatisfied with the service they have received and is requesting compensation, we will first seek to resolve the issue under our **feedback and complaints policy**.
- 6.2 If a customer feels they may be entitled to compensation and wishes to make a claim or a complaint, we will accept these via:
- Online complaint or feedback forms on the Council's website
 - Email: complaints@folkestone-hythe.gov.uk
 - Telephone on 01303 853000
 - Or write to us at: Folkestone & Hythe District Council, Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY

7. Withdrawing Compensation Claims

- 7.1 If a tenant, leaseholder or their representative withdraws a complaint or claim for compensation we will confirm this in writing. Any outstanding issues to be investigated or addressed will be followed in accordance with internal management processes and not under the complaints process.

8. Monitoring Arrangements

- 8.1 Council officers will adhere to a formal procedure developed by the Housing Service. This will identify levels of compensation that may be paid and the process by which this will be decided. Authorisation to award compensation will be identified within the procedure and will be appropriate to the level of compensation to be paid.
- 8.2 Records of all compensation claims and payment awards will be monitored internally by the Council. This may be reported alongside complaints or other statistical performance data to Senior Managers or Members where appropriate, or when requested.
- 8.3 Budget holders will keep records of payments made, which will be reviewed through cyclical budget monitoring arrangements, and will assist in determining future budget provision.
- 8.4 The administration of complaints is audited every 4 years and the process around compensation claims will be assessed as part of this audit. The audits are undertaken by East Kent Audit Partnership who will examine and evaluate the procedures and controls in place to ensure that best practice is reflected in the way that we work.

9. Equality and Diversity

- 9.1 An Equality Impact Assessment has been carried out to determine whether this policy could have an impact on any tenants or leaseholder which unfairly discriminates or disadvantages them in the context of the Equality Act 2010. Through the implementation of this policy, all reasonable adjustments will be made to ensure we provide a fair and equitable service to all.

Appendix 1

Exclusions:

We will not pay financial compensation under the following circumstances:

1. Where the fault is caused by a third party who is not acting on our behalf
2. For a service which the Council has no responsibility for
3. Items for which leaseholders are responsible for, as included in or implied by their lease
4. Where a claim can be made on home contents or buildings insurance. Residents are expected to take out adequate home contents insurance for their furniture, decoration and personal possessions to insure them against accidental damage, loss, fire or water damage, burglary and so on. This policy is not intended to replace or compensate for a resident's lack of home contents insurance
5. Where the incident was caused because of negligence by the resident or their failure to comply with the terms of their tenancy or lease such as not providing access to contractors to complete work required
6. Personal injury claims – any such claims will be handled via the Council's insurers
7. Loss of earnings
8. Where a re-arranged appointment or need to undertake a follow up appointment could not have been anticipated and results in a resident having to take time off work to allow access
9. Circumstances beyond the Council's control e.g. storm damage or flooding, unusual traffic delays and travel conditions that result in delays for appointments; lack of availability of component parts needed for repairs or maintenance, and local or national issues such as a pandemic
10. Where work is required at a property and the tenant or leaseholder has been informed about the work before it is carried out, the work has been completed as intended and in a reasonable manner
11. Reasonable evidence that a resident's lifestyle choices have resulted in condensation and mould growth due to lack of heating or air ventilation
12. Where there is, or has been, a payment ordered by a court, Ombudsman or tribunal in respect of the same issue

13. Accidental damage where the Council has not done something wrong such as burst pipes, blocked drains or other events that could not have been predicted or had not been previously reported
14. Alterations carried out to a property without the Council's express written permission
15. Loss or damage caused by tenants, visitors or adjacent occupiers
16. The tenant or leaseholder has prevented the Council from delivering a service or has contributed in some other way to the service failure
17. The loss of utility supplies or where repairs need water or power supply, and the tenant or leaseholder has not taken adequate steps to mitigate this loss
18. Where legal proceedings are underway or have taken place
19. Where there is a current or associated insurance claim against the Council

The above list is not exhaustive.

Where we receive compensation claims that cannot be dealt with under this policy, we will explain the reasons and let complainants know what to do next.