

Tenant Compensation Policy 2019

**Mid Devon District Council**

**Tenant Compensation Policy**

**Policy Number: OBS 003**

**October 2019**

**Version Control Sheet**

**Title:** Tenant Compensation Policy

**Purpose:** To review the Tenant Compensation Policy in accordance with good practice and relevant legislative requirements / to create a policy for a new system of work

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**Date:** October 2019

**Version Number:** ~~Version-Number\*~~1.3.1

**Status:** Policy Review

**Review Frequency:** Every 10 years or sooner if required, and in accordance with changes in good practice and legislation.

**Next review date:** October 2029

**Consultation:** This document was sent out for consultation to the following:

- Director of Operations
- Cabinet Member for Housing
- Tenants Together Group
- Group Managers
- Leadership Team

~~Delete as appropriate\*~~

**Document History:** This document obtained the following approvals.

Title	Date	Version Approved
Director of Operations		
Cabinet Member for Housing	02/09/19	1.3
Tenants Together Group	12/09/19	1.3
Group Managers	09/09/19	1.3
Leadership Team		<u>1.3.1</u>
Homes Policy Development Group		
Cabinet		

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## 1.0. Introduction

- 1.1. This policy statement outlines Mid Devon District Council's, Operations Building Services' approach to requests for tenant compensation.
- 1.2. A clear policy will ensure that decisions are made in line with legislation and contractual obligation, as well as ensuring decisions made are fair and consistent.

## 2.0. Scope

- 2.1. This policy explains how we will deal effectively with requests for tenant compensation. The rationale behind this policy is to ensure that there are clear guidelines to inform officers on decisions as to whether compensation should or should not be paid, and if so, how much that amount will be.
- 2.2. This policy covers the following items:
  - Statutory Compensation – Home loss
  - Statutory Compensation – Disturbance Payments
  - Statutory Compensation – The Right to Repair
  - Statutory Compensation – Compensation for tenants' improvements
  - Discretionary Compensation
  - Circumstances where claims will not be met

## 3.0 Related Documents

- Tenancy agreement
- Lease
- Garage and GGRP (Garage Ground Rent Plot ) Tenancy Agreement
- Repairs handbook

## 4.0 Definitions

- 4.1 For the purposes of this policy, the following definitions apply:
  - **Tenant** – means any person, or registered provider of social housing that has a tenancy agreement with the Council or is a leaseholder with the Council
  - **Council Property** – means any land/property owned by the Council either as the freehold or leasehold owner

- **The Right to Repair** – means the right to have certain repairs carried out within given timescales in accordance within The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994.
- **We/Us/Our** – Mid Devon District Council Housing Service, Tenancy Service or Repairs Service
- **Contractor** - means a person prepared to carry out a qualifying repair and may include the landlord
- **Prescribed description of repair** ~~– (in relation to The Right to Repair) means a repair to a dwelling-house which~~
  - a) remedies a defect specified in appendix 2 of this policy.
  - b) will not, in the opinion of the landlord, cost more than £250 to repair.
- **First prescribed period** ~~– (in relation to The Right to Repair) means the period specified in The Right to Repair Regulations and defined with the term “first prescribed period” the first working day after the date of issue of the first request, unless an inspection is first required.~~
- **Second prescribed period** ~~– (in relation to The Right to Repair) means the period specified in the Right to Repair Regulations and defined with the term “second prescribed period” first working day after the date of issue of the second request, unless an inspection is first required.~~
- **Working day** – means any day which is not a public holiday, a Saturday or a Sunday.
- **Qualifying Repair** - means any repair of a Prescribed description of repair which the Council is obliged by a repairing covenant to carry out

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**Commented [PL2]:** The second prescribed period is wrongly drafted. I have amended to refer to the regulations to obtain the period. If required I could put in the alternative the definition from the regulations. Please let me know your thoughts

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**Commented [PL3]:** The term qualifying repair is used later in the report but there is no definition

## 5.0 Statutory Compensation – Home Loss

**5.0** The circumstances under which payments relating to Home Loss will be paid are set out in our Decant Policy.

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### 5.1

## 6.0 Statutory Compensation – Disturbance Payments

**6.0** The circumstances under which disturbance payments will be paid are set out in our Decant Policy.

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### 6.1

## 7.0 Statutory Compensation – The Right to Repair

7.1 Subject to and in accordance with The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994, secure tenants/introductory tenants of Mid Devon District Council are entitled:

**Commented [PL4]:** The regulations apply to introductory tenants as well

- a) to have qualifying repairs carried out, at their landlords' expense, to the dwelling-houses of which they are such tenants; and
- b) to receive compensation from their landlords if qualifying repairs are not carried out within the prescribed period.

~~Tenants may be entitled to compensation for prescribed repairs if the Mid Devon District Council Housing Service twice fails to complete the repair within the prescribed timescales.~~

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#### Repair process

~~7.2~~ Where a secure tenant/ introductory tenant applies for a repair to be carried out, the following process should be followed:

#### 7.2

~~7.3~~ If it considers it necessary, the Council should inspect the dwelling-house in order to satisfy itself whether the repair is a qualifying repair.

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#### 7.2.1

~~7.4~~ If the Council does not consider the repair to be a qualifying repair, then it must notify the tenant of this and give an explanation as to why this is the case by reference to the Right to repair regulations.

#### 7.2.2

~~7.5~~ If the Council considers that the repair is a qualifying repair then it must issue a repair notice to a contractor (which can include the Council), give the tenant a copy of the notice and an explanation of the Right to repair regulations. A repair notice must contain (1) the name of the tenant, (2) the address of the dwelling-house (3) the nature of the repair (4) the name, address and telephone number of the contractor who is to carry out the repair (5) the arrangements made for the contractor to obtain access to the dwelling-house; and (6) the last day of the first prescribed period

#### 7.2.3

~~7.2.4~~ If a qualifying repair has not been carried out within the first prescribed period, and the tenant notifies the Council that another contractor is required then a further repair notice should be issued to another contractor (where practicable) and a copy given to the tenant. The further repair

notice should contain the same information as the original repair notice but should refer to the second prescribed period

7.67.3 Where a contractor does not complete qualifying repairs within the second prescribed period, then the tenant has a right to a certain amount of compensation from the Council but this is subject where the second prescribed period is suspended because of circumstances of an exceptional nature beyond the control of the Council or contractor who is to carry out the repair which prevents the repair being carried out.

7.77.4 The Right to Repair will cease to apply if:

- a) the tenant informs the landlord that he no longer wants the repair carried out or
- b) the tenant, although he has been given reasonable opportunity, fails –

1.0 to provide details of the arrangements for the contractor to arrange access or

i. \_\_\_\_\_

i. \_\_\_\_\_ to provide access for an inspection or for the repair to be carried out

2.0 Compensation will not be payable in circumstances where:

c. \_\_\_\_\_ the repair has been inspected and attended to within set service standards, and the tenant has been advised that the relevant parts are on order, although Mid Devon District Council will endeavour to provide a temporary repair or solution in the mean time

d. \_\_\_\_\_ there are exceptional circumstances beyond the control of Mid Devon District Council or the contractor carrying out the works

e. \_\_\_\_\_ the repair is deemed to be rechargeable to the tenant

f.ii. \_\_\_\_\_ the repair was not as described by the tenant

7.87.5 Mid Devon District Council housing repairs will pay a the specified sum as compensation to the secure/introductory tenant if the qualifying repair has not been carried out within the second prescribed period.

\_\_\_\_\_ The 'Specified Sum' means the lesser of £50 and

7.6

£10 + (£2 x N)

Where N is the number of days (counting part of a day as a complete day) in the period starting on the day after the second prescribed period ends and ending on the day on which the qualifying repair is completed.

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7.107.7 We reserve the right to off-set any sums owed to us by the secure tenant against any compensation payable under the Right to Repair.

## 8.0 Statutory Compensation - Compensation for Tenants' Own Improvements

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

**Commented [PL6]:** It is a statutory right not contractual

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

8.3 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.*

8.4 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 of the tenancy to make a claim. The tenant will need to supply with the claim:

- Name and address
- Details of improvement
- Evidence of permission

- Evidence of cost of improvement
- The dates the improvement works started and finished

• The following guidelines will apply when determining whether compensation is payable:

8.5

• Introductory tenants will not qualify for compensation

8.5.1

• Permission must be sought by the tenant and received from Mid Devon District Council housing service, in writing, prior to the improvement being carried out.

8.5.2

• Work must have been undertaken to an acceptable standard by a competent and qualified contractor.

8.5.3

• Relevant statutory approvals, building regulations, planning permission etc. have been gained and documentary evidence as such is available

8.5.4

• Compensation will not be payable where the tenancy is ended through a possession order obtained through the County or High Court.

8.5.5

• Compensation will not be payable where the tenancy passes from joint to sole names (or vice versa)

8.5.6

• Compensation will not be payable where a mutual exchange has taken place

8.5.7

~~9.0~~ Compensation will not be payable if a tenant has exercised their right to Buy

8.5.8

8.6

~~8.7~~ Subject to all the provisions and guidelines contained in this policy, the amount of compensation the Council may consider payable for a qualifying improvement shall be

~~8.8~~ where

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~~8.9 C=the cost of the improvement, which shall exclude the amount of any grant or minor works assistance under Part VIII of the Local Government and Housing Act 1989 or the Home Energy Efficiency Grants Regulations 19921 paid in respect of the improvement;~~

~~8.10 N=the notional life of the improvement; and~~

~~Y=the number of complete years, with part of a year being rounded up to a complete year, starting on the date the improvement was completed~~

8.6 Subject to all the provisions and guidelines contained in this policy, the amount of compensation the Council may consider payable for a qualifying improvement shall be  $C \times (1 - Y/N)$  where –

C = the cost of the improvement, which shall exclude the amount of any grant or minor works assistance under Part VIII of the Local Government and Housing Act 1989 or the Home Energy Efficiency Grants Regulations 19921 paid in respect of the improvement;

N = the notional life of the improvement; and

Y = the number of complete years, with part of a year being rounded up to a complete year, starting on the date the improvement was completed

8.7 The notional life of the improvement can be found in The Secure Tenants of Local Authorities (Compensation for Improvements) Regulations 1994

8.8 The landlord may deduct from and (in the case of sub-paragraph (c) below) add to the amount of compensation calculated in accordance with the above formula such sum as is reasonable to take into account any of the following matters which applies (notwithstanding, in the case of sub-paragraph (c), that otherwise compensation would not be payable)—

- (a) the cost of the improvement was excessive;
- (b) the improvement is of a higher quality than it would have been had the landlord properly effected it;
- (c) the improvement has deteriorated at a lesser rate than provided for in the notional life for that improvement; and
- (d) the improvement has deteriorated at a greater rate than provided for in the notional life for that improvement.

The following guidelines will also apply when determining how much compensation is payable:

### 8.9

The maximum payable per qualifying improvement is £3000 and the minimum £50 in line with legislation

#### 8.9.1

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When a claim compensation for Tenants' Improvements has been received, the council may arrange an inspection by a surveyor and make an assessment based on the cost of the improvement, its estimated total life and the value of the residual life of the improvement to assess the payment that should be made

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The condition of the improvement will be taken into consideration in the offer of compensation

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Mid Devon District Council may offer less or no compensation if it thinks that the improvement was unnecessary, costed too much, is of a higher quality that if the council has carried out the work or is not in line with the type of improvement Mid Devon District Council would offer tenants.

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### 8.9.2

8.9.3 The amount payable will be offset against any debt owed to the housing service, or where there are likely to be void recharges.

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## 10.09.0 Discretionary Compensation

10.19.1 Any discretionary award for activities or lack of performance not included within the Tenant Statutory Right will be processed as a formal service request. If a tenant remains dissatisfied with the outcome of a service request, this can be reviewed through the MDDC Complaints Policy. Where a tenant accepts any compensatory or good will gesture payment, this will end the formal process.

### 11.010.0 Circumstances where claims for discretionary compensation will not be met:

Commented [PL10]: Is this for the discretionary compensation only or does it include the statutory compensation under the Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994? This needs to be clear. If it is for the statutory compensation this does not accord with the regulations and will need to be looked at

11.410.1 The loss or damage is a result of routine failure of a building's component, fixture or fittings where MDDC Housing has not been negligent.

11.210.2 Where non-availability of parts or materials prevents MDDC's Housing Service completing repairs within the published repair timescales, and the tenant has been kept fully informed

11.310.3 Where the failure is the result of extreme or unforeseen conditions (such as weather conditions) where the council has taken all reasonable steps to restore services or facilities under the prevailing conditions.

11.410.4 Where the service failure is due to interruptions in gas, electricity or water supplies as a result of the non-performance of utility companies, or through the action of the tenant.

11.510.5 Where the loss or damage is the tenant's own fault, including the failure to report repairs in a timely manner or to keep appointments.

11.610.6 Where the loss or damage is as a result of the tenant not noticing or reporting a repair.

[11.710.7](#) Where a tenant is informed in advance of an appointment for destructive works i.e. renewal of bathroom suite, plastering works or re-roofing and the tenant chooses to leave items in the area, or leaves items uncovered that subsequently get damaged

[11.810.8](#) Where the loss or damage arises from an alteration or repair which the tenant has arranged privately or carried out them self.

[11.910.9](#) Where the loss or damage is due to acts of negligence by a third party, for example, a visitor or contractor who is not acting on behalf of the council.

[11.1010.10](#) Where MDDC has acted reasonably and complied with its legal and contractual liabilities

[11.1110.11](#) Where loss or damage to personal possessions stored in a council garage, outhouse, porch or shed

#### **[12.011.0](#) External Contractors appointed by Mid Devon District Council**

[12.111.1](#) MDDC will ensure that all contractors carry Public Liability Insurance and they have a clear and appropriate Compensation and Complaints Policy.

[12.211.2](#) Where a claim is made in respect of personal injury, damage to possessions or other financial loss alleged to have been caused by a council contractor's negligence, the council will not accept liability for the claim, but will refer the claim to the contractor themselves.

#### **[13.012.0](#) Home Contents Insurance**

[13.112.1](#) Tenants are encouraged to have home contents insurance to cover their personal belongings and cost of interior redecoration in the event of damage

[13.212.2](#) Mid Devon District Council Housing officers will promote and encourage the tenant to take up contents insurance during their contact with tenants, especially at sign up stage

[13.312.3](#) Garage tenants should advise their neighbourhood officer if they store anything other than a vehicle in the garage, in order that they can be advised that garages are not guaranteed water tight or secure storage. Any vehicle stored in a garage should be taxed/SORNed and insured, regardless of whether the vehicle is in use or not

[13.412.4](#) Should tenants choose not to take a suitable home contents insurance policy, they take responsibility for replacing items and redecorating at their own cost

#### **[14.013.0](#) Independent Housing Ombudsman**

[14.113.1](#) With the exception of statutory compensation ~~his~~ compensation policy may not apply where a tenant has made a claim for compensation via the Independent Housing Ombudsman In such cases MDDC, where appropriate, will pay compensation as directed by the Ombudsman.

**Commented [PL11]:** The statutory compensation regulations do not provide that statutory compensation is not payable if a complaint is made to the Independent Housing Ombudsman

#### **[15.014.0](#) Legal Proceedings**

[15.414.1](#) With the exception of statutory compensation, the policy does not apply where a tenant has commenced legal proceedings.

#### **[16.015.0](#) Payment of Compensation**

[16.415.1](#) Compensation payments will be made within 30 days of the offer being accepted by the claimant

[16.215.2](#) All offers of discretionary payments will be made on a 'without prejudice' basis

[16.315.3](#) In cases where discretionary compensation is due to a tenant but their rent account is in arrears, the compensation will be offset against any rent or other housing related debt on the tenants rent account EXCEPT in cases where compensation is being offered to reimburse a direct financial loss or expense incurred by the tenant (for example replacement of a damaged personal household article)

#### **[17.016.0](#) Appeals / Disputes**

[17.416.1](#) Tenants have a right to dispute or appeal the compensation decision if they feel that MDDC has not met its legal or statutory requirements, or if there is evidence that there has been a service failure.

[17.216.2](#) 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.

[17.316.3](#) Disputes can be formally dealt with as a service request.

[17.416.4](#) First time disputes or appeals cannot be dealt with as formal complaints in the first instance.

#### **[18.017.0](#) Complaints**

[18.417.1](#) Were a Tenant is dissatisfied with the outcome of their response to their formal service request then the formal complaints process can be initiated.

[18.217.2](#) We will deal with any complaints about our service in accordance with our Complaints Procedure. Details are available on the Council's website at [www.middevon.gov.uk](http://www.middevon.gov.uk) or available by telephone on 01884 255255.

#### **[19.018.0](#) References**

- The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994.
- [The Housing Act 1985](#)
- [The Leasehold Reform, Housing and Urban Development Act 1993](#)

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#### **[20.019.0](#) Equality and Diversity**

[19.1](#) The Housing Service will tailor its services to meet the diverse needs of individuals. We foster good relations with people when providing services to eliminate discrimination and to promote equality of opportunity.

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19.2 MDDC will ensure that this policy is applied fairly to all tenants. The council will not directly or indirectly discriminate against any person or group of people because of their race, religion, gender, marital status, sexual orientation, disability or any other grounds set out in our Equality and Diversity Policy.

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20.19.3 In relation to the implementation of this policy, the housing and repairs service will support tenants as necessary to exercise their rights under this policy and associated regulations. We will tailor our communication as appropriate to ensure that our tenants understand their rights. This policy and any other related publications of the MDDC Housing Service can be provided on request in other formats (e.g. in braille, on tape, in large print)

#### **21.20.0 Review**

21.20.1 This policy has been written in line with current relevant legislation. The policy will be reviewed and revised to reflect any legislation requirements and/or other guidance or good practice. The next review of this policy is due October 2029 and every 10 years thereafter.

**Appendix 1 – Summary of additions and revisions**

<b>Policy Ref</b>	<b>Description</b>	<b>Date</b>
1.0	<del>Change of wording from 'policy statement' to 'introduction', including policy statement, to bring in line with consistent policy format</del>	14/08/19
1.0	<del>Complaints and performance statements removed, to be added to later section, in line with consistent policy format.</del>	14/08/19
2.1	<del>New section with added background information on Scope of policy in line with consistent policy format.</del>	14/08/19
2.2	<del>'Policy Standards' transferred to this section of 'scope' in line with consistent policy format.</del>	14/08/19
4.0	<del>Addition of 'Definitions' section in line with consistent policy format.</del>	14/08/19
7.0	<del>Additions to clarify in line with regulations.</del>	14/08/19
	<del>Appendix 2 added — schedule of repairs included in The Right to Repair, with prescribed periods.</del>	14/08/19
8.2	<del>Addition — date of improvement section added, in line with guidance.</del>	14/08/19
8.3	<del>Additional items added — shower, [storage cupboards] in bathroom or kitchen, loft or cavity wall insulation, draught proofing or 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)</del>	14/08/19
8.4	<del>Added: Details on when and how tenants can claim.</del>	14/08/19
8.5	<del>Added: 'Permission must be sought by the tenant and received from Mid-Devon District Council housing service, in writing, prior to the improvement being carried out.</del>	14/08/19

8.5	<del>Removed - must have submitted three estimates from bona fide contractors and have received written permission from the Council prior to starting work</del>	14/08/19
8.6	<del>Addition – further guidance on the impact of age, condition and necessity of improvement.</del>	14/08/19
8.6	<del>Addition – off setting compensation against tenant debt</del>	14/08/19
Appendix 3	<del>Addition – Compensation for Tenants' Own Improvements – Calculation of compensation payable</del>	14/08/19

**Appendix 12 – Schedule of repairs included in The Right to Repair, with prescribed periods.**

<b>Defect</b>	<b>Prescribed period (in working days)</b>
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 31st October and 1st May	1
Total or partial loss of space or water heating between 30th April and 1st November	3

<b>Defect</b>	<b>Prescribed period (in working days)</b>
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 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

Appendix 23 - Compensation for Tenants' Own Improvements – Calculation of compensation payable

**CALCULATION OF COMPENSATION PAYABLE**

