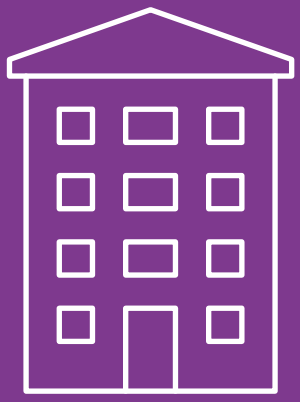
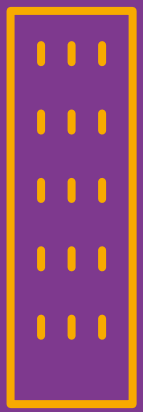
Birmingham City Council

# CITY HOUSING COMPENSATION

## Policy





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# 1.0 SCOPE AND PURPOSE

1.1 Birmingham City Council ("the Council") is committed to consistently providing a high-quality service to all customers, although we recognise there may be times when services do not always meet the Council's high standards and customers are inconvenienced. Section 92 of the Local Government Act 2000 permits the Council to remedy injustice arising from poor service, including by way of making a payment ("Compensation") to the person adversely affected.

1.2 The Council is a member of the Housing Ombudsman Scheme and The Local Government and Social Care Ombudsman Scheme, as such, it has introduced this policy as part of its commitment to compliance with the Housing Ombudsman's Complaint Handling Code for member landlords and the Local Government and Social Care Ombudsman's Complaint Handling guidance.

1.3 Where a complaint is justified, an apology may be sufficient to correct any inconvenience caused. However, the Council recognises that where there is evidence that a complainant may have suffered loss or injustice, other remedial action may also need to be considered, including financial compensation.

1.3 Accordingly, this policy sets out the circumstances in which the Council will consider an award of Compensation and use of its power to make discretionary payments, in its capacity as a landlord or Housing Authority.

1.4 This policy is supplemental to the Council's general complaints policy and process, insofar as those policies are also used to report concerns to the Council in its capacity as a Housing authority or residential landlord. For the avoidance of doubt, this policy does not apply in circumstances where the Council is a commercial landlord, or to circumstances involving other non-housing/non-residential land owned or controlled by the Council.

1.5 This policy applies to:

- Council Tenants (where the issues relate to housing).
- Leaseholders where the Council is Landlord (including shared owners).
- Applicants for a Council Home (either via the Council's Housing Register or through the Council's statutory homelessness functions).
- Individuals who live close to, or are affected by, a property we own or manage in our capacity as Housing Authority or residential landlord.
- Citizens who have approached the Council as homeless, or who are registering a housing need on the Birmingham Allocations system.
- Natural persons interacting with the Council in its capacity as Housing Authority or residential landlord, or in circumstances relating to land and property held by the Council for the same purpose.

1.6 Notwithstanding item 1.4, this list is not exhaustive and at the sole discretion of the Council, we may choose to apply this policy in any other circumstance relating to Housing.

# 2.0 HOW COMPENSATION IS MANAGED

2.1 The Council applies the following principles when managing claims under this policy:

a) We, and the contractors acting on our behalf, aim to provide a good quality service to all our customers. When we fail to meet these standards and commitments, we will take reasonable action to put this right as quickly as possible.

b) In the majority of cases where the Council identifies a fault or failing, an apology, alongside rectification of the issue which caused the complaint to be made, will be entirely sufficient. However, there may be some cases where the Council considers it appropriate to offer compensation in addition. Any consideration to compensation will be undertaken in accordance with the Housing Ombudsman Remedy Guidance (2022) or the Local Government and Social Care Ombudsman's Guidance on Remedies, dependent upon the relevant Ombudsman service for the issue under consideration

c) We may consider practical action to provide all or part of a reasonable solution to the service failure as well, or instead, of any other remedy.

d) We, and the contractors working on our behalf, will deploy a set of agreed service standards and try to address issues as soon as possible to prevent complaints and compensation being necessary.

e) When considering what is reasonable and proportionate, we will take into consideration factors such as, at what point we knew about a situation and whether we acted in line with our policies, as well as whether anyone else, including the complainant, may have contributed towards the issue or delay.

f) Residents should always make a claim on their own contents insurance where there has been damage to their belongings. If the tenant's insurers believe that we are responsible, they can submit a claim to our insurers by contacting us for their details.

g) The Council recommends that all tenants take out contents insurance – advice is provided at the outset of the tenancy or can be accessed via the Council's Neighbourhood Advice and Information Service.

2.2 In assessing potential remedies, due consideration will be given to the guidance set out within the Housing Ombudsman's Complaint Handling Code and to the Local Government and Social Care Ombudsman's guidance on remedies.

# 3.0 EXCLUSIONS AND EXEMPTIONS

3.1 Please note, this policy is not intended to be used to duplicate or enhance payments or claims, which exist separately. Accordingly, this policy will not apply in the following circumstances:

a. Where there is a legal claim, or where someone has threatened or may make a legal claim for housing disrepair.
b. Where there is a legal claim, or where someone has threatened or may make a legal claim for injury, loss or damage, which may be on the basis of insurance, or otherwise.
c. As an appeal process or to request a different outcome, for any of the matters referred to at (a) or (b).
d. Where the claim relates to land or property not owned or managed by the Council.
e. In relation to Birmingham Municipal Housing Trust properties that are still within the 12 month "defect period" where repairs will be remedied by the relevant contractor.
f. Loss or damage to possessions where there is evidence that this is as a result of a deliberate act, or the failure to take reasonable actions to remedy an issue, save where the loss or damage is directly attributable to the actions of the Council or a contractor(s) acting on the Council's behalf.
g. Mandatory compensation claims (see section 4.2.)
h. Where the Council has acted appropriately to resolve an issue but external factors beyond the Council's control (for example; severe weather, inability to gain access to the property, or other issues not within the Council's control) have delayed or prevented the issue from being resolved in a more timely manner.
i. Where tenants have not reported issues to the Council promptly, or at all, or where the tenant is responsible for the loss or delay of a service.
j. Where a sub-tenant is seeking compensation from the Council.
k. Where additional rental costs are incurred during the process of moving into a new property.
l. For requests of reimbursement due to loss of earnings.

3.2 Each case will be considered on its merits, in line with the Council's policies and the guidance from the relevant Ombudsman, and the Council may choose, at its sole discretion, to consider a remedy under this policy even where these exclusions apply.

3.3 Any decision to use this policy, and any decision made under this policy, will strictly not be an admission of liability or concession on behalf of the Council, in relation to any claim or legal proceedings.

3.4 For the avoidance of doubt, the existence of this policy does not limit or restrict the right of any person to issue legal proceedings, if they consider they have a claim. However, the Council may decline to offer compensation under this policy, if it considers such sum may be duplicative of any alleged loss or damage claimed, or potentially recoverable under any other process.

3.5 This policy is designed to work alongside the Council's Complaints policy, relating solely to housing issues, to resolve complaints fairly and consistently. This policy has been written in line with the Ombudsmen's' dispute resolution principles and expanded to reflect Birmingham City Council's general approach to dealing with reports of dissatisfaction:

- **Be fair:** Treat people fairly and follow fair process, keeping them updated with progress within published timescales.
- **Be objective:** Ensure that matters are dealt with impartially at every stage.
- **Put things right:** Work to put the customer back into the position they were in before the issue occurred. Acknowledge and apologise for any mistake or service failure, providing an explanation of what went wrong where we (or a contractor working on BCCs behalf) were at fault.
- **Be consistent:** Compensate customers in line with this policy.
- **Learn from outcomes:** Learn from all feedback and use it to improve services.

# 4.0 TYPES OF COMPENSATION

There are three types of compensation payment:

1. Mandatory (statutory and contractual)
2. Quantifiable loss payments (where actual loss is demonstrated)
3. Discretionary payments (for time and trouble/distress and inconvenience).

It is important that tenants or those interacting with housing services are compensated fairly where there is a failure to deliver to the standards expected, and that funds are spent appropriately.

### 4.1 Mandatory Compensation

Note: this policy does not govern decisions relating to any form of mandatory compensation. Therefore, the examples referred to in this section are for information only:

#### 4.1.1 Home loss and Disturbance

This is a statutory scheme covering payments to tenants and leaseholders with a qualifying interest in land where they are required to move for specific reasons and disturbance payments may also apply. This scheme is administered by the Council.

The Council will make Home Loss payments in accordance with the statutory levels set under the Land Compensation Act 1973, as amended by The Home Loss Payments (Prescribed Amounts) (England) Regulations 2022 (Statutory Instrument 2022 No.793) ('2022 Regulations').

Payments are made when a tenant is moved on a permanent basis due to improvement or redevelopment of their home. The changes must result in it being unsuitable for the tenant to return to their property, for example, changes due to demolition, compulsory purchase, or where remodelling affects the size of the accommodation.

Payments are not intended to cover costs associated with moving home. Disturbance grants can be made under the Housing Act 1985 (Part II, Section 26), whereby the Council has discretion to give financial assistance towards tenants' removal expenses.

#### 4.1.2 Compensation for improvements

Council tenants whose tenancy is ending can apply for compensation for previously approved 'qualifying improvements' they had made to the home.

#### 4.1.3 Right to Repair

This is a statutory compensation scheme which enables tenants to have qualifying repairs which affect their health or safety completed quickly or receive compensation where they have not been completed within the prescribed time.

Qualifying repairs must cost £250 or less and can include the following (This is not an exhaustive list but the following examples are indicative of circumstances where compensation may be considered):

- Total or partial loss of electrical power
- Unsafe power, lighting socket or electrical fitting
- Total or partial loss of water supply
- Total or partial loss of gas or oil supply
- Blocked flue to open fire or boiler
- Total or partial loss of space or water heating

- Blocked or leaking foul drain, soil stack or (where there is no other working toilet in the dwelling house) toilet pan
- Toilet not flushing (where there is no other toilet in the house)
- Blocked sink, bath, or basin
- Tap which cannot be turned
- Leaking from water or heating pipe, tank, or cistern
- Leaking roof
- Insecure external window, door, or lock
- Loose or detached banister or handrail
- Rotten timber flooring or stair tread
- Door entry phone not working
- Mechanical extractor fan in internal kitchen or bathroom not working

4.1.4 Disrepair

Claims and notifications of disrepair will be managed according to separate processes which have been written to comply with relevant legislation. Disrepair claims will not be considered as part of this policy.

4.2 Quantifiable loss

Compensation payable for quantifiable loss is where the service failure has resulted in a measurable loss. Examples include:

- Higher energy costs of running alternative sources of heating when we have failed to repair the heating system within a reasonable timeframe from receipt of notification by the Council of the system failure;
- Higher water bills due to failure to remedy a leak. Although, we may consider paying compensation for part of the loss that can reasonably be equated to charges related specifically to the leak;
- The reasonable additional cost of buying take-away food when there are no cooking facilities, or inadequate cooking facilities, in bed and breakfast or hostel accommodation;
- Charges to store personal belongings when the Council has breached the six-week maximum limit for families in bed and breakfast accommodation and an earlier move to alternative temporary accommodation would have enabled them to take their belongings out of storage earlier;
- Extra travelling costs to get to school or work if a household is inappropriately placed in accommodation outside of the Council's area;
- Any outstanding charges for temporary accommodation where the accommodation was clearly unsuitable for the household's needs.

Evidence of the costs must be provided, which must have been reasonably incurred. The Council may offer discretionary compensation on top of compensation to cover loss, if it deems this appropriate, at its sole discretion.

Compensation will not be awarded if the loss of facility is caused by:

- A third party (e.g., the tenant's utility supplier).
- The tenant's own action / inaction (including where this has partially contributed to the loss).
- Planned works agreed in advance with the tenant unless the loss is for longer than agreed.

4.2.1 Loss of rooms and facilities in the property

Tenants will be awarded a payment when rooms within accommodation provided by the Council cannot be used for an unreasonable period of time. Excluding where:

- This has not been reported to Council, or has not been reported promptly
- The repair has been completed in line with the Council's published repair response times.
- The tenant has been temporarily decanted by the Council, or has refused a suitable offer of a decant.

The award will be based on the net rent and number of rooms in the property that could not be used.

4.2.2 Loss of communal services or facilities

Compensation for loss of communal services or facilities will not be paid, except in exceptional circumstances. For example:

- If there is a service failure due to the Council;
- Where there is a lift failure (Excluding ground floor tenants) and:
  d. There is no access to another lift in the same block, and
  e. The lift has been out of action for more than 7 consecutive days, and/or
  f. There have been 3 or more instances of lift failure during a 1 month period (Irrespective of the duration of each outage)

Decisions will be made on a case by case basis.

4.2.3 Defects in new properties

The Council does not pay compensation solely because there are defects in new build properties, this includes where faulty items such as lighting or doors need to be replaced. Also see 3.1(e).

However, the Council may pay compensation where:

- The length of time to resolve the defect is excessive. This will be considered on a case-by-case basis, considering the contractual arrangements in place for individual schemes.
- The tenant experience service failure in the rectification of defects such as failure to attend agreed appointments, or where the defect has caused additional damage or hardship, this will be considered on a case-by-case basis.

4.3 Discretionary Compensation

Discretionary compensation payments may be made to recognise the inconvenience caused by the service failure, and to show that the Council is committed to making amends and to restore good relations.

Discretionary compensation is made on a case-by-case basis, generally with an amount not exceeding £250, except when recommendations by the relevant Ombudsman might indicate that this is necessary. Each case will be assessed on its own merit and there will be an approvals process where payments in excess of £250 are required.

Examples of situations where discretionary compensation payments may be made include:

- Failure or delay providing a service, for example completing a repair;
- Failure to meet target response times;
- Not following BCC policies or procedures;
- Poor complaint handling.

# 5.0 NON-FINANCIAL REMEDIES

5.1 The Council will always consider offering non-financial remedies in addition to, or instead of, financial awards if appropriate.

These could include:

- The actions needed to put things right, such as carrying out a repair.
- Acknowledging when things have gone wrong.
- Providing a full response to explain why the service fell below the expected level.
- Apologising.
- Taking swift action if there has been a delay.
- Reconsidering or changing a previous decision.
- Amending a record.
- Offering an additional service which would not usually be given, for example decorating.
- Carrying out a new assessment of need.
- Carrying out agreed adaptations within a set timescale.
- Inspecting work done and arranging remedial action.

5.2 In addition, the Council may:

- Review a policy or process where there is evidence of a flaw or gap (informing the tenant that this will be done).
- Offer staff guidance or training if there is evidence of failure (informing the tenant that this will be done).
- Take appropriate action against an employee or contractor.

5.3 The bullet points above contain examples of additional activities the Council may undertake; the list is not exhaustive but is designed to illustrate the Council's commitment.

# 6.0 RECEIVING COMPENSATION AND MAKING A COMPLAINT

6.1 Residents are actively encouraged to give feedback. If a service has not been delivered and residents are dissatisfied, the Council has a Complaints Policy BCC Compliments, Comments and Complaints Policy | Birmingham City Council which sets out the ways in which residents can make a complaint. Any person to whom this policy applies (or a representative acting on their behalf) may request that compensation is considered at any time throughout the complaints process.

6.2 A team will assess all requests around compensation to make sure that requests are managed in a consistent way and are considered on a case-by-case basis on their own individual merit. There are internal procedures which set out how compensation should be assessed, and this is delivered with the principles of the Housing Ombudsman remedies guidance in mind.

6.3 Senior officers in the City Housing Directorate and the Council's Finance Team will be made aware of all compensation requests, through a quarterly reporting process at Compliance Board. All compensation payments will be made through the Council's online finance system to demonstrate transparency around reporting.

6.4 To seek advice on compensation queries or to request compensation, the contact details below set out the appropriate route:

- Online: https://www.birmingham.gov.uk/downloads/download/564/housing_repairs _ compensation_claim_form
- By email: housingombudsmancasemanagement@birmingham.gov.uk
- By phone: 0121 303 1111
- By post: City Housing
  PO BO 16832
  Birmingham
  B2 2RL

# 7.0 APPEALS/REVIEWS

7.1 Where the Council makes an offer following a claim for compensation, the customer will be invited to indicate their acceptance of the offer made in writing. The customer's right to request a review of the offer made will be confirmed in the decision letter.

7.2 If a customer requests for the offer to be reviewed, this will be considered by an alternative decision maker, in line with the Council's Complaints Policy. The outcome of this review will constitute the final internal decision; the decision letter will confirm the customer's rights to seek assistance via the relevant Ombudsman.

7.3 Where an offer of compensation is made as part of the Council's offered resolution to a Stage 1 complaint, the customer will have the right to request a review of the decision made or of the compensation offered; this will be confirmed in the Council's decision letter.

7.4 If a customer requests a review of the decision made or the compensation offered as a result of a Stage 1 complaint, this will be considered by a different officer under the Council's Stage 2 process, as confirmed in the Council's Complaints Policy. The outcome of this review will constitute the final internal decision; the decision letter will confirm the customer's rights to seek assistance via the relevant Ombudsman.

# 8.0 QUALITY

8.1 The Council is committed to delivering compensation payments in accordance with the relevant guidance in a consistent way. The aim is to continually improve the way the Council works and to acknowledge, and try to learn from, the occasions when the Housing service fails to meet expectations.

8.2 All claims received, investigations undertaken, outcomes and payments are recorded on a central database, to ensure consistency of decision making and to ensure compensation and remedies are analysed as part of learning and continuous improvement.

# 9.0 EQUALITY AND DIVERSITY

9.1 Equality and diversity are of fundamental importance to services provided regardless of a person's protected characteristics under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, religion pregnancy and maternity, race, belief, or sex).

9.2 All must be treated with respect, and this is reflected through the Council's 'Everybody's Battle, Everybody's Business' action plan.

9.3 The Council treats everyone it houses, serves, and employs, fairly, and encourages others to do the same.

9.4 In meeting the aims of this policy, the Council will provide information that is clear, accessible, and in an appropriate format (such as translated into another language, or in large print).

9.5 Where appropriate, Council Officers will assist tenants to make their complaint, by, for example, helping to complete paperwork. This policy provides assurance that compensation is offered in a fair and consistent way.

# 10 COMMUNICATION AND CONSULTATION

10.1 We will provide information on this policy and how we calculate compensation on the Birmingham City Council website.