

DRAFT

CUSTOMER COMPENSATION POLICY

August 09

DRAFT**SOUTHWAY HOUSING TRUST
CUSTOMER COMPENSATION POLICY****1. Key Objectives**

- Southway Housing Trust aims to provide high quality services to our customers at all times
- If customers are dissatisfied and wish to complain about our action, lack of action, or about the standard of service they receive, we will ensure that their complaints are dealt with quickly, fairly and consistently. The details of this approach are set out in our Customer Compliments and Complaints Policy.
- We recognise, however, that an explanation or an honest apology may not always be enough to compensate a customer for upset, inconvenience or loss suffered when standards are not achieved, or when things go wrong.
- Southway Housing Trust recognises that, in some cases, customers have a statutory right to compensation.
- We will publicise the Compensation Policy by including information for new tenants at sign-up, and through advertising in our Newsletters.

2. Content

This policy includes details about how we will deal with claims for compensation. It includes sections covering: -

- Key policy standards
- Statutory Compensation
- Discretionary compensation procedure
- Guidance on discretionary compensation awards
- Temporary decants
- Policy monitoring and review

The policy is closely linked to the Customer Compliments and Complaints Policy. It forms part of our commitment to customer care and continued best practice.

3. Key Policy Standards

3.1 Statutory compensation

This policy includes the statutory rights of our customers to receive compensation, which includes: -

- Home Loss and Disturbance payments
- The Right to Repair
- Compensation for Tenants' Improvements
- Compensation for delays in dealing with Right to Buy applications

These are covered in detail in section 5.

3.2 Discretionary Compensation

In addition to these statutory rights, Southway Housing Trust will consider making discretionary compensation awards where: -

- We fail to meet our obligations under the tenancy or lease agreement
- There is a loss of service or facilities
- Tenants cannot use part of their home due to a poor repair or a lack of repair

Financial compensation, or some other benefit, will be considered in cases where

- Specific financial losses, that can be evidenced, have been incurred.
- A tenant has had to live in poor conditions for longer than is considered reasonable.
- The complainant has spent a significant amount of time and trouble pursuing the matter, and payment is considered appropriate as a goodwill gesture.
- Taking into account the individual circumstances of the tenant, it is considered that exceptional hardship and/or inconvenience has been caused by events. Particular emphasis will be given to cases involving vulnerable tenants.

Guidance on when to award discretionary compensation, and the levels of award is covered in section 5.

Disturbance payments will also be paid where tenants have to temporarily leave their home to allow major repairs and improvements to be carried out. This is covered in section 7, Temporary Decants.

4. **Statutory Compensation**

Legislation exists to financially compensate tenants in a number of situations.

4.1 Home Loss

Home Loss payments are made in recognition of the personal distress and inconvenience suffered by people who are permanently displaced from their homes.

The law covering Home Loss Payments is contained in the Land Compensation Act 1973 (s. 29-33) (as amended by the Housing Act 1974 and the Planning and Compensation Act 1991 s. 68).

The Act entitles a tenant to a Home Loss payment where they are required by Southway Housing Trust to move out of their property because it is to be demolished or reconstructed. A customer is entitled to a lump sum payment of a maximum of £4,700 (as determined by The Home Loss Payments (prescribed amounts) Regulations 2008), with joint tenants sharing the payment.

In order to qualify for the payment: -

- The move must be permanent
- The move must be a consequence of demolition or reconstruction
- The tenant must have been in legal occupation for at least one year prior to the date of moving out

In the case of statutory succession following the death of a tenant, successors are allowed to add the length of residence of the deceased tenant to make up the qualifying period.

Tenants on Southway Assured Shorthold tenancy agreements are entitled to payment if they have been in residence for more than 12 months.

It is legally acceptable to offset home loss payments against a tenants rent arrears. Therefore awards will be subject to a rent arrears check and if the account is in arrears the appropriate amount will be paid into a tenants rent account to clear the arrears.

Following any necessary Board approvals, awards will be subject to the approval of the Director of Neighbourhood Services, or the Director of Regeneration and Asset Management.

4.2 Disturbance Payments

Tenants that are entitled to Home Loss payments and those required to move who do not meet the criteria above, are also entitled to Disturbance Payments. The Law does not state an actual amount, only that they should cover “the reasonable expenses of the person entitled to the payment in removing from the land from which he/she is displaced”.

Reasonable expenses will include, for example: -

- Removal costs
- Re fitting of carpets and curtains
- Disconnection and reconnection of electricity, gas, telephone and fitted appliances
- 3 months' redirection of mail

Expenses will be met on the production of receipts. Where tenants are unable to make "up front" payments, where necessary, a lump sum payment can be made prior to the move, of up to £250.00.

Where a number of tenants are moving as part of the same project Southway Housing Trust may engage service providers, (for example, a removal company), and payments for this specific service will be made directly to the provider, rather than to the tenant

4.3 The Right to Repair

The Leasehold reform, Housing and Urban Development Act 1993 (s 121 and 122) contains the Right to Repair provisions.

Tenants are entitled to compensation for a listed range of certain repairs or maintenance problems affecting health, safety or security if the landlord (Southway Housing Trust) twice fails to complete the repair within set timescales. In order to qualify under this scheme, the estimated cost of the repair should be £250.00 or less, and should be included in those listed in Southway's Housing Trust separate Right to Repair Policy.

Compensation under the Right to Repair will not be payable when:

- The repair has been inspected and attended to, and the tenant has been advised that the relevant parts are on order.
- The repair is classed as rechargeable to the tenant.
- There was no access at the time of the pre-booked appointment to do the work.

There is a flat rate award of £10 plus £2 per day, for each day the repair remains outstanding after the second report has been raised, up to a total of £50.

4.4 Compensation for Tenants' own Improvements

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

Qualifying improvements that may be eligible for compensation are;

- Bath or shower
- Wash hand basin
- Toilet
- Kitchen sink
- Storage cupboards
- Kitchen work surfaces

- Central heating or water heating
- Thermostatic radiator valves
- Insulation of pipes, water tank or cylinder
- Loft insulation
- Cavity wall insulation
- Draught proofing or external doors and windows
- Double glazing, secondary glazing or other window replacement
- Rewiring of electrical fittings
- Any other work that the Trust agrees improves the security of the home – except burglar alarms.

The following guidelines will apply when determining whether compensation is payable.

- Customers must have submitted three estimates from bona fide contractors and have received written permission from the Southway Housing Trust prior to starting work (or MCC if prior to 26 November 2007).
- The work must have been undertaken to an acceptable standard.
- All relevant statutory approvals (building control, planning permission etc) have been gained and documentary evidence is available to verify this.
- When a claim for compensation for Tenants' Improvements has been received, Southway Housing Trust will arrange an inspection 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.
- Compensation will only be paid at the end of the tenancy and may be set against any sums that may be owed to the Southway Housing Trust.
- Compensation will not normally be payable where the tenancy is ended through a possession action taken through the County Court
- Compensation will not be payable if the tenant has exercised their Right to Buy or Right to Acquire (if applicable) or where the tenancy passes from joint to sole names (or vice versa)

The maximum payable is £3,000 and the minimum £50 in line with legislation.

The list of qualifying improvements will be publicised to tenants.

4.5 Compensation for Right to Buy Delays

Tenants who have exercised a Right to Buy application are entitled to claim compensation for any delay in completing the sale to required timescales, in line with Section 124 of the Housing Act 1988, Sections 153A and 153B and Part V of the Housing Act 1985 (the Right to Buy).

To claim compensation tenants must first issue a Delay Notice to officers giving one month in which to resolve the delay. If the tenant issues a further Operative Notice due to the failure of Southway Housing Trust to comply with the original notice, rent free weeks will be taken from the final purchase price for each week outside the deadline.

If the delay exceeds 12 months a greater sum of one and a half times is deducted from the final purchase price.

5. Discretionary Compensation procedure

All claims for compensation will be considered.

Claims can be made by letter, by fax, e mail, telephone, text phone or personal visit or via a local authority councillor, Board Member or MP. Assistance with making a claim in writing will be offered to customers where requested.

Southway will take out insurance to handle the risk of liability to itself where tenants claim that they have been injured, or their possessions damaged, or they have suffered a financial loss, as a result of Southway's negligence. Such claims will be therefore referred to the insurer. Any exception to this will be only by the joint agreement of the Chief Executive and the Director of Finance and Resources.

However, where such claims are explicitly below the relevant insurance excess, these will be resolved through general procedures agreed with the insurer.

Other than where the claim has been transferred to the insurer, discretionary compensation can be considered at any stage within the Complaints process when the complainant makes a claim, or where the relevant Head of Service feels a compensation award is appropriate to assist in resolving the complaint at an early stage.

Claims not transferred to the insurer will be investigated to establish whether they are valid, proven and in line with this policy.

If a repair arises due to misuse or damage by the customer, i.e. a rechargeable repair, it will be excluded from all compensation schemes.

The policy does not cover interior redecoration following repair or improvement works. All such claims will be referred to the Director of Regeneration and Asset Management, or to a nominated officer.

5.1 Guidance on discretionary compensation awards

The following tables detail the situations when compensation awards will be considered, and indicate levels for an appropriate financial award (as at September 2009).

Whilst this is for guidance only, it should generally be adhered to in order to ensure consistency in the way compensation awards are made. This should also mean that decisions are taken quickly in response to a complainant's claim.

Approval by the relevant Director is required where;

- The situation is not covered by the guidance
- The recommended award is greater than that covered by the guidance
- The complainant has not made a compensation claim, but compensation is considered to be appropriate.

5.2 Guidance on Discretionary Compensation

Service Failure	Recommended Compensation
Failure to deliver a service which is subject to a service charge, where the fault has been reported and The Southway Housing Trust has failed to respond within the advertised repair timescales without a justifiable explanation	Reimbursement of the relevant part of service charge
Major works not completed at time of let, (for example, preventing commission of heating or hot water), when this is at no fault of the tenant	Consideration of fixed rent free period until property habitable
Lack of hot water and/or heating beyond the published repairs timescales	Up to £2 per day after the completion deadline for each service not available, <u>if</u> temporary heating and/or hot water facilities have not been provided by Southway
Increased costs of utility bills due to the Trust's use of tenant's electricity supplies (e.g. drying out property after a burst)	Up to £2 per day for each appliance (e.g. dehumidifier) – evidence of increased costs may be sought.
Increased cost of utility bills due to use of electric heaters as a temporary solution beyond published repair timescales.	Up to £2.00 per day – evidence of increased costs may be sought
Damage to tenant's property due to the negligent or inappropriate actions of the Trust's staff or contractors	<p>Refer to insurers.</p> <p>Where the claimant will accept a settlement which is beneath the prevailing relevant Excess within Southway's insurance policy, the insurer will be notified of the amount agreed between tenant and Southway, and this will be paid as a "Without Prejudice" discretionary payment under standard acceptance documentation as agreed with Southway's legal advisers and the insurer.</p>

Service Failure	Recommended Compensation
Loss of use of part of a property for a period beyond the time advised for completing remedial works. Kitchen or Bathroom or Toilet (where no other available) Bedroom (where no spare room available) or Living Room Dining Room/Parlour	Payment of compensation will be based on the following; 20% reduction in net rent per day 10% reduction in net rent per day 5% reduction in net rent per day Up to a maximum amount of £250
Failure to deliver services where this results in a material loss or significant inconvenience to the customer.	£10.00 OR Cost to the customer as reasonably evidenced
Rubbish and materials not removed after the repair is completed.	£5.00 per day after 5 days of completion of the work

6 Temporary Decants

Customers will always be consulted about any major repair or improvement work that is planned to their home.

Wherever it is practical to do so, works will be carried out with the customer remaining at home.

Where the health and safety of the customer would be at risk, or extensive works are required which cannot reasonably be carried out around them, they will be required to move temporarily. Each case will be considered, taking into account the individual circumstances of the tenant, in particular where tenants are vulnerable for any reason.

Southway Housing Trust will make reasonable and suitable offers of alternative accommodation. If the customer does not wish to move, or refuses two suitable offers of alternative accommodation, legal action may be taken, depending on the individual circumstances, compelling the customer to move. Legal action will be taken at the discretion of the relevant Head of Service, with due consideration to the tenant's own situation.

Where a temporary decant takes place, the customer will receive compensation for the cost of removal and associated expenses. (See section 4.2). The temporary accommodation will be of a habitable standard, clean and with acceptable standards of decoration. In most cases, floor coverings will be provided and, if necessary, the customer's own belongings will be safely stored.

7 General Matters

7.1 All claims will be acknowledged within two working days and either investigated by the relevant Manager or referred to the insurer (as appropriate), within 10 working days.

If it is not possible to reach a decision, on a case not transferred to the insurer, within 10 working days, the customer will be advised of the reason why and given a revised target date for a decision to be made.

7.2 Circumstances where claims for compensation will not be met are:

- The loss or damage is a result of routine failure of a building's component, fixture or fittings where Southway Housing Trust has not been negligent
- The non-availability of parts or materials prevents the Southway Housing Trust completing repairs within the published repair timescales and the customer has been kept fully informed.
- Service failure is the result of extreme or unforeseen conditions (such as weather conditions) where the Southway Housing Trust has taken all reasonable steps to restore services or facilities under the prevailing conditions
- 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
- The loss or damage is the customers' own fault, including the failure to report repairs or keep appointments
- The loss or damage arises from an alteration or repair which the customer has arranged or carried out themselves
- 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 Southway Housing Trust
- Where the Southway Housing Trust has acted reasonably and complied with legal and contractual liabilities

7.3 External Contractors

The Southway Housing Trust will ensure that all contractors carry public liability insurance and that they have a clear compensation and complaints policy.

Where a claim is made in respect of personal injury, damage to possessions or other financial loss alleged to have been caused by a Southway contractor's negligence, Southway will either assist the tenant claim against the contractor or refer the claim to the contractor themselves.

7.4 Home Contents Insurance

Customers are encouraged to have home contents insurance to cover their personal belongings. Southway Housing Trust offers a low cost home insurance scheme to its tenants and leaseholders.

7.5 Independent Housing Ombudsman

This Compensation Policy does not apply where a customer has made a claim for compensation via the Independent Housing Ombudsman. In such cases Southway Housing Trust, where appropriate, will pay compensation as directed by the Ombudsman.

7.6 Legal proceedings

With the exception of statutory compensation, the policy does not apply where a customer has commenced legal proceedings. All offers of discretionary compensation are made on a without prejudice basis.

7.7 Payment of Compensation

If a decision is taken to pay compensation in accordance with this Policy, it will be paid within two weeks of the customer accepting the offer.

7.8 Rent Arrears and Other Debts

In instances where discretionary compensation is due to a tenant but their rent account is in arrears (and a court order is in place), or where other monies are owed to Southway Housing Trust, the Officer will ask the tenant if they wish to offset the payment against the debt.

7.9 Appeals

Appeals by tenants against a decision related to the payment of compensation can be made using the complaints procedure set out in Southway Housing Trusts Compliments and Complaints policy.

8 Policy Monitoring and Review

The Compensation policy will be reviewed every two years and reported to Southway Housing Trust Board for approval. Any changes to section 6, Guidance on Discretionary Compensation, are delegated to the Chief Executive.

Quarterly monitoring of compensation awards will be carried out by the Quality Assurance Officer to ensure consistency of approach, appropriate use of compensation awards and compliance with agreed timescales.

9 Equality & Diversity

9.1 Southway Housing Trust will ensure that this policy is applied fairly to all our customers. We 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 other grounds set out in our Equality and Diversity Policy.

9.2 This policy and any other related publications of Southway Housing Trust can be provided on request in other formats (e.g. in an alternative language, in Braille, on tape, in large print).

10 Links with Other Southway Housing Trust Policies

This policy should be read in conjunction with the following policy/policies:

- Customer Compliments & Complaints
- Responsive Repairs
- Right to Repair
- Rechargeable Repairs
- Out of Hours Repairs
- Equal Opportunities
- Customer Care
- Decant Policy and Procedure

POLICY IMPLEMENTATION AND REVIEW HISTORY

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Amendment(s) Made/Reason

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