

## Right to Compensation Policy

<b>Policy:</b>	To establish DPHA's policy and set out our position on The Right to Compensation Policy
<b>Purpose:</b>	To comply with all statutory and regulatory requirements in relation to Compensation for Improvements for Tenants.
<b>Review Date:</b>	November 2021
<b>Guidance:</b>	Scottish Secure Tenancy (Compensation for Improvements Regulations 2002, Statutory Instrument No 2002/312). Scottish Secure Tenancy Agreement Scottish Housing Regulator Social Housing Charter
<b>Regulatory Standards:</b>	<ol style="list-style-type: none"> <li>1. The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.</li> <li>2. The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.</li> <li>3. The RSL manages its resources to ensure its financial well-being and economic effectiveness.</li> <li>4. The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.</li> </ol>
<b>Date reviewed by Policy Review Working Group (PRWG):</b>	21 November 2018
<b>Date approved by PRWG (under delegated authority):</b>	
<b>Amendments</b>	

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## **1. INTRODUCTION**

- 1.1 This policy outlines the principles that will be used by Dalmuir Park Housing Association (DPHA) in implementing the Right to Compensation policy (RTC) in line with guidance and legislation.

## **2. AIMS OF THE POLICY**

- 2.1 To promote the highest possible standard of service to the Association's tenants with the possibility of qualifying for a financial compensation payment for certain improvements they have carried out to their homes.
- 2.2 To promote a prompt, efficient and transparent service which offers flexibility to meet the needs of the Association's tenants.

## **3. LEGAL AND REGULATORY REQUIREMENTS**

- 3.1 The statutory Right to Compensation (RTC) was introduced under the provisions within the Housing (Scotland) Act 2001. The Regulations came into force on 30th September 2002. Under the act, tenants have the right to apply for compensation for certain improvements they have carried out to their homes. This right applies to all tenants of RSLs.
- 3.2 The Right to Compensation for Improvements applies to improvements completed on or after 30th September 2002. If the tenant was a secure tenant and carried out improvements to their home before 30th September 2002, they will continue to have rights under the old scheme.

## **4. MAIN COMPONENTS OF THE RIGHT TO COMPENSATION FOR IMPROVEMENTS**

- 4.1 The tenant must have received the written consent of the Association prior to making the improvement. The Association has discretion to grant retrospective consent.
- 4.2 The improvements must qualify in terms of the list of Qualifying Improvements as detailed in **Appendix 1**.
- 4.3 The qualifying improvement work must have been started after 30<sup>th</sup> September 2002.
- 4.4 Tenants must make a claim, in writing, to the Association for compensation under this policy. This written request must be made during the period beginning 28 days before and ending 21 days after the tenancy comes to an end. The Association will respond to the written claim within 28 days.
- 4.5 Compensation does not require to be paid if the calculated amount is less than £100.00. However, the Association has discretion to compensate for a value less than £100.00.
- 4.6 The maximum compensation payable will be £4,000.00.

## **5. QUALIFYING PERSON**

5.1 A Qualifying Person is a person who is, immediately before the termination of the tenancy, a tenant under a Scottish Secure Tenancy and is:-

- a) the tenant who carried out the qualifying improvement work
- b) a tenant of a joint tenancy which existed at the time when the qualifying improvement work was carried out or,
- c) a tenant who succeeded to the tenancy under section 22 of the Housing (Scotland) Act 2001 and the tenancy did not cease to be a secure tenancy on this succession.

5.2 It is assumed that in the case of a joint tenancy, the right to compensation will be resolved between those who jointly qualify for compensation, at the time they join or leave the joint tenancy. If one joint tenant cannot be traced when compensation is to be paid, the full amount of compensation due should be paid to the remaining joint tenant. It is for the missing tenant to recover his or her share from those to whom it was paid.

## **6. EXCEPTIONS**

6.1 Tenants will not qualify for compensation if:-

- a) the claim for compensation for improvement is submitted to the Association after 21 days from date they terminate their tenancy with us.
- b) the house was disposed of under section 14 of the Housing (Scotland) Act 1987 and section 65 of the Housing (Scotland) Act 2001
- c) the amount of compensation is less than the prescribed amount of £100.00.
- d) an order for recovery of possession was made by the Association on any of the grounds for recovery as specified in Part 1 of schedule 2 to the Housing (Scotland) Act 2001.
- e) the landlord grants a new tenancy of the same or substantially the same property to the qualifying tenant, or all the qualifying joint tenants, whether or not with anyone else or,
- f) the qualifying tenant or successor has already received compensation for the improvement.
- g) Granting retrospective consent (as in 4.1 above), after 30<sup>th</sup> September 2002, for an improvement completed prior to 30<sup>th</sup> September 2002, does not make the improvement a qualifying one.

## 7. MAKING A CLAIM

- 7.1 In line with the principles of the Right to Compensation for Improvements, on the notification of a termination of tenancy, the Association should remind the tenant of their right to compensation.
- 7.2 To qualify for compensation, a tenant must submit a claim in writing during the stipulated notice period, from 28 days before termination until 21 days after the tenancy end. A copy of the claim form is attached at **Appendix 2**. The claim must contain sufficient information for the Association to calculate the amount of compensation entitlement. However, it is considered good practice to obtain this information at the time consent is given for the alteration.
- 7.3 The main components of such a claim will be:
- a) the name of the tenant(s) and the address of the property,
  - b) a description of each of the improvements for which a claim is being made,
  - c) the start and completion date of each improvement (or an estimate of these dates) and the total cost of each improvement.
  - d) Details of any cost not borne by the tenant i.e. any grant received from any public body (including Dalmuir Park Housing Association) or other source.
- 7.4 The regulations are silent about whether any VAT paid by the tenant is part of the total cost on which compensation can be calculated. As per section 8.1 (c) below, entitlement to compensation will be calculated excluding VAT.
- 7.5 Tenants must provide receipts to support a claim for compensation. However, a copy of the quote should be provided at the time of requesting consent for the improvement.
- 7.6 The Association must assess the reasonableness of any cost claimed by the tenant. The amount of compensation can be reduced if it is considered that the original cost is excessive in comparison to what the landlord could have expected to pay to have done the work, or if the improvement were of a higher quality than the landlord would usually expect to install. This assessment must also take into account that the tenant would not benefit from any contract costs or economics of scale available to the landlord.
- 7.7 The Association is required to make a reasonable decision as to whether or not the work was undertaken by a qualified contractor.
- 7.8 The Association shall respond to a claim for compensation for improvement within 28 days from the date of claim.

## 8. CALCULATION OF COMPENSATION

8.1 Compensation will be calculated on only the real cost to the tenant. It will exclude,

- a) Any costs attributed to the tenant's own labour.
- b) Any grants received by the tenant towards the cost of the improvements.
- c) VAT paid

Compensation will also exclude,

- a) The cost of any professional fees paid.
- b) The cost of obtaining planning consent or consent under the building regulation.

8.2 The basis for calculating compensation will be the tenant's original cost, discounted over the notional life of the improvements that have elapsed since the improvement was completed. The Association can also deduct a notional amount for excessive wear and tear or could increase compensation if the condition of the improvement is noticeably better than could be expected.

8.3 Any grants received by the tenant will be deducted from the cost of the improvement before the calculation of compensation.

8.4 Depreciation for the elapsed time since installation of the improvement will be calculated on a straight line method. A year is calculated from the date of installation, only full years will be taken into account. The formula to be used is expressed:

$$1 - \frac{Y \times C}{N}$$

where,

C = the eligible cost of the improvements (excluding grants etc)

N = the notional life of the improvement (as per Appendix 1)

Y = the number of years that have elapsed since the improvement was completed.

8.5 The lower financial limit of compensation for any one improvement is set at £100.00. After the calculation in paragraph 8.4 i.e. if the result of this process is less than £100.00, compensation is not payable. However, as detailed in 4.5, the Association has discretion to compensate for a value less than £100.00.

8.6 The upper financial limit of compensation for any one improvement has been set at £4,000.00. If the amount payable after the calculation in paragraph 8.4 is more than £4,000.00, the landlord is not required to pay amount in excess of this figure.

8.7 In making an offer of compensation, the Association is required to state how the figure was calculated. This must detail any deductions (or supplements) made and how the offer may have been affected by the upper or lower limits.

## **9.0 PAYMENT**

9.1 Payment should be made to the qualifying person(s). In the case of there being more than one qualifying person but one of them cannot be traced, a claim may be made, and compensation paid to, the other qualifying person(s). The “missing” qualifying persons shall have the right to recover from those who have been paid, their share of any compensation and they will have no further claim against Dalmuir Park Housing Association.

9.2 Except with the discretionary authority of the Director, any compensation payment will automatically be credited to a debt due to the Association. If there is more than one debt owed, the order of priority will be as follows:-

- a) Rent arrears and service charges
- b) Housing benefit overpayment recovery
- c) Rechargeable repairs
- d) Parents Fees – DOSCG

## **10.0 DECISION MAKING AND APPEALS**

10.1 If the qualifying person is not satisfied with the compensation calculation or any of the Association’s decisions, which have led to this, that person may, within 28 days of receipt of the Association’s decision seek to appeal the decision.

10.2 Where an appeal has been received the following process will apply:-

- a) an independent valuer or surveyor who took no part in making the original decision will be appointed by the Association for the purpose of the appeal
- b) one or more committee members who must have taken no part in making the original decision will review the decision
- c) A final decision will be made by the full Management Committee.

10.3 Qualifying persons are entitled to make written representations including representations from a representative of their choice before the panel undertaking the review.

10.4 This appeals procedure is intended to clarify points of interpretation of the policy and to allow Tenants to put forward information that may not have been apparent or available during the original decision making process.

10.5 Tenants can obtain advice and information about their remedies from a local Citizens Advice Bureau or a Solicitor, or a representative.

10.6 The Association will notify the tenant within 28 days of receiving their appeal of either their revised offer or confirmation of the original decision.

## **11. MONITORING**

11.1 We will regularly assess the impact and take-up of the Right to Compensation for Improvements policy entitlement by analysing:

- a) the level of claims received,
- b) the types of improvements undertaken,
- c) the amount of compensation paid and
- d) the number and outcome of any appeals made against compensation decisions.

11.2 We will propose any revision to the Policy to the Management Committee that are considered necessary as a result of the review.

## **12. EQUALITY AND DIVERSITY**

12.1 We are committed to promoting an environment of respect, understanding, encouraging diversity and eliminating discrimination by providing equality of opportunity for all. This is reflected in our Equality and Diversity Policy.

## **13. COMPLAINTS**

13.1 Although the Association is committed to providing high levels of service, we accept that there may be occasions where customers may not be not satisfied with the service they have received from us. We value all complaints and use this information to help us improve our services. Our Complaints Policy describes our complaints procedure and how to make a complaint.

## **14. GDPR**

14.1 We will treat your personal data in line with our obligations under the current data protection regulations and our Privacy Policy. Information regarding how all data will be used and the basis for processing all data is provided in our Customer Fair Processing Notice.



## Appendix 1:

LIST OF IMPROVEMENTS	NOTIONAL LIFE (YEARS)
Bath or Shower	15
Wash Hand Basin	15
Toilet (WC complete)	15
Kitchen Sink Renewal	20
Storage Cupboards in Bathroom or Kitchen	20
Work Surfaces in Kitchen	20
Space or Water Heating	15
Thermostatic Radiator Valve	30
Insulation of Pipes, Water Tank or Cylinder	30
Installation of mechanical ventilation in bathrooms and kitchens	15
Loft Insulation	30
Cavity Wall Insulation	30
Sound Insulation	30
Draught proofing of external Doors or Windows	15
Double Glazing or other window replacement or secondary glazing	30
Rewiring and the provision of power and lighting or other electrical fittings	30
Mains wired smoke detectors	10
Security measures, excluding burglar alarm system	10



**TENANTS RIGHT TO COMPENSATION FOR IMPROVEMENTS**

**APPLICATION FORM FOR COMPENSATION**

**Name(s) of Tenant(s):**

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**Address of Property being vacated:**

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**Improvement(s) for which you are claiming:**

	<u>Improvement</u>	<u>Date Work Commenced</u>	<u>Date Work Commenced</u>	<u>Cost</u> <u>£</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

Please provide details of any grant(s) for Scottish Homes or under Part XIII of the Housing (Scotland) Act 1987 or under the Home Energy Efficiency Scheme that you have received for the improvement work(s).

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Have you previously applied for, or received, compensation for this improvement from your landlord? If so, when and what amount was received?

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On what date does your tenancy end?

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Which address would you like your payment to be sent to? (If different from 2 on the preceding page).

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**Claims should be forwarded to:**      **The Housing Manager**  
**Dalmuir Park Housing Association Limited**  
**Beardmore House**  
**631 Dumbarton Road**  
**Dalmuir**  
**Clydebank**  
**G81 4EU**