

The BCHA Group

Compensation for Service Users

SUBJECT: Compensation for Service Users SECTIONS: All Departments REVIEWED BY: Policy & Quality officer	Policy No: 304	HCA Regulatory Code QAF
	BCHA Board Approved: March 2005 Equality Impact Assessment: N/A	
	Effective Date: August 2012	Review Date: August 2019

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1.0 Introduction

- 1.1 The organisation aims to ensure that all services to customers are provided to stated standards. Where the service does not meet these standards or loss or inconvenience is incurred by service users due to a failure on the part of the organisation or its agents, the organisation will consider the payment of compensation to service users.
- 1.2 For the purposes of this policy “organisation” will be taken to mean BCHA and any of its subsidiaries.
- 1.3 This policy does not affect tenants’ statutory rights to compensation under the Right to Repair, the Right to Improve and Home Loss scheme.
- 1.4 The organisation expects all service users to insure their own belongings. Discretionary payments made as acts of goodwill do not represent admission of legal liability.

2.0 Scope

- 2.1 This policy applies to all service users, potential service users and members of the public. However, some forms of statutory compensation may be restricted to certain types of resident (see appendix 4). Any reference to “**tenants**” in this policy shall **not** include “**licence holders**”. Any reference to “**residents**” will **not** include occupants of property managed under agreement with another housing association where they are tenants/licence holders of that association.

3.0 Summary

SECTION: MANDATORY PAYMENTS

- 4 Loss of Accommodation through Redevelopment (“Home Loss”)
- 5 Failure to Carry Out Essential Repairs (“Right to Repair”)
- 6 Right to Compensation for Home Improvements

SECTION DISCRETIONARY PAYMENTS

- 7 Loss of Accommodation due to Major Repairs
- 8 Loss of Use of Part of Property
- 9 Loss of Utility Supply
- 10 Damage to an Individual’s Property
- 11 Personal Injury
- 12 Loss of Service for which a charge is payable
- 13 Sub-standard service for which a charge is payable
- 14 Other ex-gratia payments
- 15 Ombudsman & Other Arbitration/Regulator Recommendations
- 16 Administration of Claims
- 17 Appeals
- 18 Publicity

4.0 Loss of accommodation through redevelopment

- 4.1 In circumstances where a resident is required to move permanently through redevelopment, the organisation will pay compensation under the Home Loss Scheme.
- 4.2 Home Loss payments are payable in addition to removal expenses where:
- The organisation is the *owner* of the property
 - The move is a *permanent one* and;
 - The move is necessitated by the redevelopment or demolition of the property (**not** simply major repairs) and;
 - The resident has lived in the property as their only or principal home for a minimum of 12 months immediately before the move.
- 4.3 The amount available under a Home Loss payment is determined by Government regulations (currently a flat rate of £4,000 as at September 2006).
- 4.4 Reasonable removal expenses will be reimbursed in accordance with paragraph 7.1 and 7.3.

5.0 Failure to carry out essential repairs

- 5.1 The organisation aims to undertake repair and improvement work to properties under management within publicised timescales and with minimum disruption to the resident, however there may be occasions when it fails to meet its objectives.
- 5.2 The organisation will honour the Right to Repair Provisions of section 121 of the Leasehold Reform, Housing and Urban Development Act 1993 for **Assured and Assured Shorthold tenancies** only.
- 5.3 Certain essential repairs, which it is estimated cost less than £250, are defined as qualifying repairs under Regulations, issued under the above Act. Where the organisation twice fails to carry out any qualifying repairs within the prescribed timescales and reasonable access has been provided, compensation must be paid to the tenant. The list of qualifying repairs, and level of compensation is given in **appendix 1**.

6.0 Right to compensation for home improvements

- 6.1 This legal right only applies to **tenants of properties owned by the organisation or leased from another housing association on a term of at least 21 years**. Compensation will be payable to tenants at the end of their tenancy for any “qualifying improvements” made with the **written permission of the organisation** since April 1994. The level of compensation payable and the list of qualifying improvements is set out in **appendix 2**.

7.0 Loss of accommodation due to major repairs

7.1 Planned Maintenance

In instances where a resident (tenant or licence holder) is required to move temporarily in order for major works (e.g. structural repairs, service installations, site works etc.) to be undertaken to their home, the organisation will reimburse the resident's **reasonable** removal expenses, including:

- Removal of furniture and belongings by a commercial company
- Disconnection/reconnection charges for electricity, gas, telephone and washing machine;
- The redirection of mail for a maximum three month period;
- Miscellaneous expenses, for example - replacement/relaying of carpets, replacement of curtains, replacement or adaptation of fitted units, storage of goods or the difference in Council Tax (where the temporary accommodation has a higher charge).

NB: compensation will only apply to items belonging to the tenant/licence holder.

7.2 Emergencies

In cases where premises have to be evacuated in an emergency to undergo major repairs, the organisation will seek to accommodate residents in appropriate temporary accommodation (for example another hostel, vacant self-contained premises, local hotels or via the local authority). In addition to any accommodation costs, the organisation will also fund:

- Transportation to and from the temporary accommodation on a once only basis,
- The costs of reasonable subsistence for up to **3 days** (cost limit to be agreed in advance)
- The purchase of an emergency supply of toiletries

Compensation in excess of the above (see also 10.1) will be at the discretion of the relevant Director on account of any hardship caused to the resident. It is expected that any amounts committed will form part of any insurance claim.

7.3 Administration

In all cases, written quotes for removal/reconnection etc must be obtained and the amount to be reimbursed must be approved prior to the removal taking place. In the event of an emergency, staff organising the removal may verify costs by telephone/fax with follow up information in writing.

8.0 Loss of use of part of a property

8.1 Where **tenants** are unable to use part of their property because of outstanding repairs, the organisation will compensate the tenant as follows:

- If the room that cannot be used substantially or at all is the kitchen, only bathroom, only WC or a principal bedroom, compensation will be paid after **4 days** loss of use (the timescale for urgent repairs)
- If one of these rooms can be used, but with some inconvenience, or the room is a spare room, compensation will be paid after 20 days loss of use
- No compensation will be payable for loss of use of garages, gardens, yards, conservatories or outbuildings provided by the organisation.

Compensation =

- Number of rooms out of use x net weekly rent x no of weeks affected.
- Number of rooms in property (in excess of time limit).

“Repairs” means defects for which the organisation is liable to do and does not include problems caused or aggravated by the tenant (e.g. condensation).

The age and health of tenants will be taken into consideration in determining whether a room is “usable”.

“Weeks affected” may include part weeks (i.e. 4 out of 7 days = 0.57 weeks).

8.2 Improvement work with tenant in situ.

Compensation will be made to all tenants who remain in occupation whilst major improvement work (as defined in section 6) is carried out. The compensation payable will be made on contract completion and will be equivalent to a **full refund or waiver** of the rent and service charges for the duration of the works.

9.0 Loss of utility supply

9.1 Compensation may be paid to residents where there is a loss of:

- Central heating for more than 24 hours between **1 October and 31 March**
- Hot water for more than 24 hours
- Cold water supply for more than 24 hours
- Electricity Supply for more than 24 hours
- Gas supply for more than 24 hours
- WC facilities for more than 24 hours

9.2 In each case, compensation will **only** be paid providing:

- The loss of supply is the fault of BCHA (i.e. the utility company or property owner bears no legal or contractual liability) and;
- There is no other suitable alternative source of the utility available in the accommodation and;
- A temporary or alternative source of the utility has not been provided by the association.

9.3 The amount payable will be **£10 per day** (or part day) after the time limits stated in 9.1.

- 9.4 Where additional power has to be used by residents to run temporary heaters or dehumidifiers supplied by the organisation, compensation of **£1 per day** will be payable to offset the likely extra expenditure (this paragraph is not restricted to Section 9).

10.0 Damage to an individual's property

The organisation does not take responsibility for insuring the belongings of its residents.

10.1 Exceptional Circumstances causing Personal Hardship

Where a resident suffers loss or substantial damage to clothing or other *essential* property owing to exceptional circumstances such as storm, fire, subsidence or explosion, the organisation will consider claims:

- Where the resident concerned did not have contents insurance for legitimate reasons **or**
- The claim fell within their excess limit **and**
- The cause of loss or damage was not owing to negligence on their part **and**
- The resident has no alternative sources of financial assistance (social fund loans, etc) and would otherwise suffer immediate and considerable hardship

In such cases, the Service Manager or Director will authorise a discretionary ex-gratia payment from the scheme **Welfare Budget** to cover reasonable repair or replacement of the articles damaged or lost. If required, quotations from up to 2 suppliers would determine what is "reasonable."

10.2 Negligence

Where the Organisation or its contractors or agents have been accused of negligence resulting in:

- The loss or damage of a service user's personal property or
- Damage to a resident's décor or
- Damage to neighbouring buildings as a result of construction or repair work

Compensation claims **over the insurable excess** will be referred to the Association's Insurers.

- 10.3 Where claims have been refused by the Insurers, fall below the excess limit or, on the advice of the Insurers, require an interim gesture of goodwill to avoid further inconvenience, the Director will authorise the payment of compensation to cover the reasonable costs of cleaning, replacement or repair of the articles damaged or lost. Quotations from at least 2 suppliers would normally determine what is "reasonable."
- 10.4 Payment will take into account the full circumstances of the case (including the value, age and condition of any personal property damaged, the financial hardship or loss caused and any other relevant factors). Such goodwill compensation should not normally exceed £1000 except with the express approval of the Chief Executive and

does not necessarily represent any admission of legal liability on the organisation's part.

10.5 **Third Parties**

Where third parties may be liable for any losses incurred by service users, the organisation will request the third party to consider paying compensation in line with existing contractual arrangements and/or the third party's own insurance or customer care arrangements. The organisation reserves the right to dictate when decisions must be made by, in line with the organisation's own service standards. Where payment is refused, the relevant Director may consider payment in accordance with 10.1 or 10.2.

11.0 **Personal Injury**

11.1 All claims for personal injury to service users or others affected by our services will be referred to the organisation's Insurers in the first instance.

11.2 Where claims have been refused by the Insurers, fall below the excess limit or require, on the advice of the Insurers, an interim gesture of goodwill, the Director will authorise the payment of compensation.

11.3 Payment will take into account the full circumstances of the case (including the age and vulnerability of the individual, the financial hardship caused and any other relevant factors). Such goodwill compensation should not normally exceed £1000 except with the express approval of the Chief Executive and does not necessarily represent any admission of legal liability on the organisation's part.

12.0 **Loss of service for which a charge is payable to the organisation**

12.1 Where the organisation has failed to provide a service which is paid for as part of the normal accommodation charge, compensation will be payable to ALL service users affected where the service has not been provided for **more than two weeks** or, in the case of less frequent services such as grass cutting, on **more than two occasions** and that reasonable, alternative arrangements were not made instead.

12.2 The amount of compensation payable will be calculated by multiplying the number of charging periods in total when the service was not available by the weekly charge for the service.

12.3 **Necessary daily services** – such as the provision of meals – must be refunded on every occasion they are not provided (whether directly or at an alternative venue) at the rate of the actual charge made.

12.4 **Substandard Service** – where a chargeable service is provided to residents or others but the organisation agrees it is below a specified or acceptable standard, compensation will be payable to all residents calculated as in 12.2.

13.0 Sub Standard service where a charge is not payable to the organisation

- 13.1 Where a service user may have suffered because the organisation has:
- Provided incorrect information or advice
 - Subjected a service user to an unreasonable delay
 - Subjected a service user to discriminatory or unfair treatment
 - Caused the service user to incur charges from their bank or similar
 - Failed to act in providing a service when a written promise was made to do so
 - Failed to attend a pre-arranged visit without reasonable prior notification which has resulted in evident financial loss (e.g. time off work) or other inconvenience to the service user
 - Failed to adhere to written service standards (other than the Right to Repair or chargeable services)

Compensation will be payable providing that the service user did not in any way obstruct the organisation in trying to deliver the service (e.g. by failing to stay in for the appointment or by not providing correct details for the association to take the correct course of action).

- 13.2 The level of payment for minor one-off service delivery issues (such as missed appointments) will be at the standard **one-off rate of £10**.
- 13.3 In more serious or longer term cases of sub-standard service, the Director will consider the payment of goodwill compensation based on the circumstances concerned of individuals concerned and any actual financial loss or inconvenience suffered.

14.0 Other ex-gratia payments

- 14.1 The organisation will consider any other claims for discretionary, goodwill compensation not described above on a case by case basis subject to the circumstances of the claim.
- 14.2 Compensation will **not** be payable for nuisance or inconvenience caused by neighbours (whether or not residents), noise caused by contractors or general stress unless this is recommended by an independent arbitrator (see section 15).

15.0 Independent arbitration

- 15.1 Where a complaint has been referred to arbitration for example to the Independent Housing Ombudsman, to a court or tribunal, to a Regulator or another arbitrator and the complaint has been decided in the service user's favour, the organisation will resolve to pay in full any compensation proposed by the independent adjudicator and to correct any deficiencies within a reasonable period.

16.0 Administration of claims

Delegated Authority

- 16.1 Compensation will be paid from the relevant budget of the service concerned. Payments will be recorded against the Compensation or Welfare expenditure codes, as appropriate.
- 16.2 All claims for compensation up to £500 will be approved by the relevant **Operational Manager**. Payments between £500 and £1,000 will be approved by the relevant **Director** upon the recommendation of the Operational Manager. Compensation settlements above this amount must be agreed by the Chief Executive and be notified to the Board or Executive Committee.

Compensation payments in excess of the Chief Executive's delegations will be agreed by the Board or Executive Committee.

Processing

- 16.3 All claims for compensation must be made in writing with any relevant supporting documentary or photographic evidence.
- 16.4 Claims for compensation must be processed using the standard form (Appendix 5) and be approved by an appropriate manager, Director or the Chief Executive dependent on the expenditure limits given above. With the exception of decorating materials and gift vouchers, all forms of payment will be issued by the Finance Department.

Method of Payment

- 16.5 Compensation will be paid in the form appropriate to the circumstances and type of claim, the service user's preferences and the costs of administering the claim. Payments must be receipted and may be in the form of:
- Cash (from a minimum of £5 up to a maximum of £50),
 - Cheque,
 - Gift vouchers,
 - Decorating materials (where décor is damaged)
 - As a credit to the rent account or
 - The purchase of necessary equipment (eg to assist studies or promote independence)

Where a resident receives full housing benefit, compensation in the form of refunded rent/service charges must still be paid in recognition of inconvenience suffered.

- 16.6 Where a service user owes money to the Association – e.g. rent arrears – the amount owed will be deducted from the agreed level of compensation and offset against the debt. However, it must be first established that any debts are not to be paid from another source (e.g. Housing Benefit). Managers may exercise their discretion and waive any offset against debts owed in order to maintain good will with the complainant.

Service Standards

- 16.7 Compensation claims will be dealt with as a complaint under the Association’s complaints procedure using the timescales set out in it (i.e. acknowledgement within **5 working days** and response within **14 calendar days**). Service users will be kept informed where these timescales cannot be met.

Second or Further Claims

- 16.8 Where a service user makes a second claim for the same service failure, the amount payable (where not prescribed by statute or contract or where not a flat rate payment) may take into account the repetition of the service failure.

17.0 Appeals

- 17.1 Where service users are dissatisfied with the amount of discretionary compensation offered or any other aspect of their claim, these will be dealt with at the appropriate stage under the organisation’s published complaints procedure. Appeals will not only review the amount offered but the circumstances surrounding the compensation claim and the degree of negligence on the part of the organisation.

18.0 Publicity

- 18.1 Service users will be made aware of the Compensation policy and its operation through a variety of appropriate means – including service users’ handbooks, newsletters and leaflets.

19.0 References

POLICY	PGN
Customer Service	301
Complaints	303
Maintenance	571

APPENDIX 1

THE STATUTORY RIGHT TO REPAIR [assured and shorthold tenants only]

Where a contractor appointed by the organisation fails to complete a repair within the timescales agreed laid out in the Maintenance Policy and Resident's Handbook and without good reason, compensation will be payable to the tenant under the Right to Repair. However, the following procedure must first be carried out:

- (1) Upon notification by the tenant that the repair has not been done within the agreed timescale, we will endeavour to get the contractor to complete the job within *3 working days* dependent on the urgency of the work needed and whether special parts are required.
- (2) If this is not possible, a second order will be placed for another contractor to do the work.
- (3) If the second contractor fails to do the work within the timescale laid out in the Maintenance Policy and the Tenants' Handbook, the tenant will be entitled to compensation provided that:
 - The tenant did not fail to provide reasonable access and
 - The cost of the work does not exceed £250 and
 - The repair is a "qualifying repair" as listed below and
 - The failure to do the work was not due to severe weather or some other exceptional circumstance beyond the reasonable control of the organisation or its contractors.

Amount of Compensation

The tenant will be entitled to £10 compensation plus £2 each day that the repair remains outstanding. The maximum amount of compensation will be £50.

Qualifying Repairs

Qualifying repairs are any repairs which, if not done, would affect the health, safety or security of residents.

Electrical Total or partial loss of power; unsafe sockets or fittings.

Plumbing Total or partial loss of water supply; blocked or leaking foul drain, soil stack or WC pan (where it is only one in the property); taps which cannot be turned; leak from water or heating pipe, tank or cistern.

Heating Blocked flue to open fire or boiler; total or partial loss of space heating.

Joinery Insecure external window, door or lock; loose or broken banister or handrails, rotten timber flooring or stair tread.

Mechanical Door entry phone not working; mechanical extractor fan in internal kitchen or bathroom not working.

APPENDIX 2

THE STATUTORY RIGHT TO COMPENSATION FOR HOME IMPROVEMENTS

Assured and Assured Shorthold tenants have a statutory and contractual right to make improvements to their home provided that written permission is first obtained from the Association. Further details of the circumstances where approval is granted are to be found in the Tenants' Handbook.

Compensation for Home Improvements

Compensation may be claimed by **tenants** (not licence holders) of property owned by the organisation or its tenants of property leased from another housing association on a term of at least 21 years.

- They are living in property **owned** by the organisation
- The improvement work commenced during or after April 1994
- The organisation gave written permission for the work to be done.
- The tenant has given written notice and claims within 14 days of the termination date.
- The tenant has not been evicted
- The tenant has not bought their home under the Right to Acquire
- The tenant has not become sole tenant or has succeeded to or been assigned the tenancy
- The improvement has been left in tact at the date of vacation for inspection.

QUALIFYING IMPROVEMENTS NOTIONAL LIFESPAN

- Loft or cavity wall Insulation 20 years
- Double or secondary glazing or other External window replacement 20 years
- Rewiring or the provision of power and Lighting or other electric fittings (inc. Smoke detectors) 15 years
- Bath or Shower 12 years
- Wash hand basin 12 years
- Toilet 12 years
- Space or water heating 12 years
- Kitchen sink 10 years
- Storage Cupboards (Bathroom or Kitchen) 10 years
- Work surfaces for food preparation 10 years
- Insulation of pipes, water tank, cylinder 10 years
- Security improvements (exc. Burglar alarms) 10 years
- Draught proofing (external doors/windows) 8 years
- Thermostatic radiator valves 7 years

Amount of Compensation

Compensation Claims must **not be for less than £50** and payments will not exceed £3,000. Written invoices (which must include date of works and payment) must be supplied by the tenant.

Compensation will be based on the following formula:

Cost of Improvement x (1 – (no. of years or part years improvement has been in place/notional lifespan))

If an improvement has been in place longer than its notional lifespan, no compensation will be payable.

The organisation reserves the right to limit claims which, in its view, are excessive or of a much higher quality than they would undertake or where the improvement has deteriorated at a faster rate than the notional lifespan.

APPENDIX 3: SUMMARY OF COMPENSATION PAYMENTS (see policy for full details)

Compensation Type Payment Authority Level

Mandatory

PERMANENT HOME LOSS due to redevelopment
 £4000 for loss of home plus
 Reasonable removal costs
 Director of Operations & Property Development in agreement with Chief Executive

RIGHT TO REPAIR □ £10 - £50 Maintenance Manager

COMPENSATION FOR HOME IMPROVEMENTS

£50 - £3,000 To £50: Maintenance Manager
 To £1,000: Director
 To £3,000: Chief Executive

Discretionary

TEMPORARY LOSS OF ACCOMMODATION DUE TO MAJOR REPAIRS

Reasonable removal costs
 Cost of temporary housing
 To £500: Maintenance Manager
 To £1,000: Director
 £1,000+: Chief Executive

LOSS OF USE OF PART OF PROPERTY

Proportion of rent charged over period of loss, dependent on the type of room(s) (see section 7)
 To £500 : Maintenance Manager
 To £1,000: Director
 To £3,000: Chief Executive

MAJOR REPAIRS WITH OCCUPIER IN SITU

Rent charged over period of Disruption
 To £500 : Maintenance Manager
 To £1,000: Director
 To £3,000: Chief Executive

LOSS OF UTILITY SUPPLY £10 per day or part day Maintenance Manager

DAMAGE TO AN INDIVIDUAL'S PROPERTY

All claims referred to Insurers
 Or Goodwill payments to cover Reasonable Costs of Replacement/Repair
 To £500: Operational Manager
 To £1,000: Director
 £1000+: Chief Executive

PERSONAL INJURY All claims referred to Insurers

Or Goodwill payments to cover any hardship or loss caused.
 To £500: Operational Manager
 To £1,000: Director
 £1000+: Chief Executive

LOSS OF SERVICE FOR WHICH CHARGE PAYABLE

Full refund of charge Operational Manager

SUB-STANDARD SERVICE (WHERE CHARGE NOT MADE)

Minor failure - £10 flat rate

Serious failure – dependent on inconvenience suffered

To £500: Operational Manager

To £1,000: Director

£1000+: Chief Executive

ALL OTHER CLAIMS On case by case basis

To £500: Operational Manager

To £1,000: Director

£1000+: Chief Executive

Independent Arbitration Payments

OMBUDSMAN & OTHER ARBITRATORS

As per recommendations

To £500: Operational Manager

To £1,000: Director

£1000+: Chief Executive

APPENDIX 4: SUMMARY OF COMPENSATION BY TYPE OF SERVICE USER BCHA

APPENDIX 5: STANDARD FORM FOR COMPENSATION PAYMENTS

NAME:	
ADDRESS:	
CONTACT NO:	DATE RECEIVED:

BCHA RESIDENT? Yes No

REASON FOR COMPENSATION:	Amount Claimed	Basis for Calculation
Statutory Home Loss Payment		
Removal expenses (for compulsory permanent or temporary moves)		
Statutory Right to Repair		
Right to Compensation for Home Improvements		
Loss of Use of part of property (inc where major repairs done with occupier in situ)		
Loss of utility supply/facilities		
Damage to Property		
Personal Injury		
Loss of Service for which charge made		
Sub-standard service (no charge made)		
Ombudsman etc Recommendation		
Other Discretionary Claim		
TOTAL CLAIMED		

Please give details of claim (inc dates) and attach with receipts/quotes, as required:

Evidence of Loss or Damage produced

Details of claim against the individual's own insurance (date, references, company etc)

Action taken by BCHA to rectify cause for claim (inc visits)

Assessment by Person with Delegated Authority

Decision (inc how compensation calculated or why refused)			
Signed		Date:	
Amount to be Paid		Method of Payment	
Expenditure Code			
Passed to Finance for Action		Date Forwarded:	
		Date: Issued by Finance:	