

Birmingham City Council

Report to Cabinet

16 January 2024



Subject: City Housing Compensation Policy

Report of: Paul Langford, Strategic Director City Housing

Relevant Cabinet Member: Cllr Jayne Francis, Cabinet Member for Housing & Homelessness

Relevant O & S Chair(s): Cllr Mohammed Idrees – Chair of Homes Overview and Scrutiny Committee

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 012053/2024		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 The City Housing Directorate seeks to implement a Compensation Policy, setting out the types of compensation that will be considered in housing related matters, the circumstances in which compensation will be paid and the ways in which compensation will be administered. The policy applies both in relation to Housing Ombudsman and Local Government and Social Care Ombudsman cases.
- 1.2 The Compensation Policy has been developed in response to the Housing Ombudsman's Paragraph 49 Report published in January 2023. In this report, the Housing Ombudsman was critical of the Council's approach to repairs handling,

record keeping and complaint handling. The Housing Ombudsman have specifically requested that a robust Compensation Policy is developed to ensure financial redress is available for residents at the appropriate time. This view was also echoed by the Regulator of Social Housing who issued a breach notice to the Council in May 2023, specifically relating to a breach in Tenant Involvement & Empowerment, as a result of poor complaints handling.

- 1.3 In response to the Housing Ombudsman's recommendations, the Directorate have mobilised a dedicated team who will manage discretionary compensation payments and will ensure recommendations made by either the Housing Ombudsman or Local Government & Social Care Ombudsman are effectively implemented.
- 1.4 This team now deals centrally with incoming Ombudsman complaints, to ensure that the Council's approach to handling and resolving complaints is consistent and in accordance with the relevant Complaints Handling Codes and the Council's internal procedures, and that there is a robust and effective mechanism for closing the loop on feedback received from the Ombudsman with the relevant services, to drive continued regulatory compliance improvements.
- 1.5 It is proposed that the Compensation Policy applies specifically to complaints about housing- this could include repairs, landlord management functions, temporary accommodation, allocations, and homelessness. The policy will be referenced within the Corporate Complaints Policy and advertised appropriately. The Housing Ombudsman specifically has a set of explicit requirements in relation to financial redress, which would not be appropriate for other Council services. It is anticipated that in the future, a corporate policy will be developed to cover all Directorates, but this is expected to be a complex process and will not happen quickly enough to meet the recommendations of the Housing Ombudsman's special report.
- 1.6 It is proposed that this policy will operate alongside the Council's existing policies for disrepair litigation or claims via the City Insurer, which will continue to be handled separately, taking into consideration the complex legal processes that are required. This policy relates specifically to compensation for distress and inconvenience, providing re-assurance to Cabinet that tenants are not being compensated more than once for the same issue where, for example, a payment has been made due to loss of facilities where the tenant then submits a complaint for the same issue.
- 1.7 The Housing Ombudsman specifically criticised the Directorate for its record keeping and failure to intervene quickly when things go wrong for residents. The Compensation Policy will be administered by one team who understand the regulatory landscape and have significant experience managing complaints handling. This removes the risk of fragility in existing systems and carves out an opportunity for operational service and contractors to truly learn from their mistakes and make vital improvements.
- 1.8 It should be noted, where a contractor is found to be at fault or partially responsible for compensation being paid, the Council will seek for the contractor to accept liability and contribute part, or all, of compensation awarded. By making payments

centrally, this process will however allow for speeding up of the existing process to the benefit of customers and for financial reconciliation to occur post hoc, rather than payments being delayed as at present whilst ultimate liability is debated.

2 Recommendations

- 2.1 That Cabinet will endorse the implementation of the Compensation Policy (Appendix 3).

3 Background

- 3.1 In January 2023, following a deep dive audit between May 2022-September 2022, the Housing Ombudsman published a special report into the Council's complaints handling and repairs service performance. This prompted a period of intensive formal monitoring, which was concluded in April 2023 when the Housing Ombudsman agreed to 'sign off' the Council's recovery plan to address the key issues raised. The Housing Ombudsman are intending to return in January 2024 to ensure that all recommendations are being progressed or embedded. The proposed policy being brought to Cabinet, is one of the subsequent actions in the Council's recovery plan.
- 3.2 The Council receives more than 7000 of housing-related complaints every year. These are dealt with in line with the Corporate Complaints Policy at either Stage 1 or Stage 2. Due to high volumes of cases, and recruitment issues within the corporate complaints team, the Directorate is experiencing delays in responding to complaints within the stated service level agreement timescales. Whilst actions have been put in place to improve performance within the corporate complaints team, recruit appropriate resources and reduce backlogs, performance against SLAs at Stage 1 and 2 remain relatively static throughout the summer period. Around 120 cases are opened by the Housing Ombudsman each year although only around half of these result in a determination being issued.
- 3.3 Historically, compensation payments have been made by the service area found at fault; where more than one area of fault is identified this has resulted in delays in payments being made and confusion over responsibility for payments, meaning that the Council then fails to meet the Ombudsman's ordered timescales for issuing compensation. This has an obvious reputational risk but also causes additional distress and inconvenience to the resident. In usual circumstances, compensation payments have only been made when ordered by the Ombudsman, this means there is limited opportunity to prevent Ombudsman activity or provide financial redress when things go wrong, rather than after the fact.
- 3.4 Whilst there is provision within the current complaints handling processes allow scope for compensation to be offered as part of the resolution process, either to reflect a service failure or failure/delay with the handling of the complaint, there is not a consistent application of this discretion. An audit of Ombudsman determinations from 2022-23 where maladministration was found highlighted that in many cases the Ombudsman was critical of the Council for not considering/offering

compensation at an earlier stage in many complaints, with resultant negative determinations and compensation orders made. Had compensation been offered in these cases at the time of the complaint, it is probable that whilst the Ombudsman may have still found fault with the issues behind the complaint, they would have been satisfied that the Council had complied with the Complaints Handling Code and offered equivalent compensation in a timely manner.

- 3.5 The findings of the Paragraph 49 report confirmed that the Ombudsman considered that the Council's current approach to handling complaints was not in line with the Complaints Handling Code, and that many residents were experiencing additional undue distress as their complaints were not handled in an appropriate manner. The Ombudsman is both aware and supportive of the steps that the Council has taken to centralise the Ombudsman and compensation activity within one team to drive improvements and achieve regulatory compliance.
- 3.6 As is standard process, the Housing Ombudsman referred the Council to the Regulator of Social Housing once the Paragraph 49 report was published. The subsequent Regulatory Notice, issued on 24 May 2023, found the Council to be in breach of the Tenant Involvement and Empowerment Standard, particularly in relation to complaints handling.

"Regarding Complaints handling, the Housing Ombudsman's Special report identified fundamental flaws in this service, including poor record keeping, poor communication and a failure to learn from complaints. Through our investigation we also identified that more than 1,000 complaints (around 60% of open complaints) were overdue. In relation to Birmingham CC's engagement with tenants, external reviews carried out in 2021 and 2022 found there was a lack of proactive, frequent, and effective communication with tenants. The reviews also found that tenants' needs were not understood, and they did not feel valued. The Regulator also considered the case as a potential breach of parts 1.1.1 and 1.3.1 of the Tenant Involvement and Empowerment Standard and has concluded that Birmingham CC has failed to treat tenants with fairness and respect, and in particular, has failed to provide an effective process for tenants to raise complaints."

- 3.7 The Regulator of Social Housing are aware of the proposed Compensation Policy and endorse all findings and recommendations of the Housing Ombudsman in relation to the Paragraph 49 report. This further supplements the need to ensure all actions are satisfactorily completed by the January 2024 deadline, and this includes the proposed Compensation Policy.

4 Options considered and Recommended Proposal

- 4.1 The options around compensation are as follows:
- i. Continue with the current model (do nothing);
 - ii. Endorse the proposed Compensation Policy.
- 4.2 If Option 1 is preferred, it is apparent from both the Housing Ombudsman's Paragraph 49 report and the subsequent Regulatory Notice that the Council will

continue to be in breach of its responsibilities under the existing Consumer Regulations. Continued failure to comply with the Ombudsman's Complaint Handling Code, Guidance on Remedies and best practice is likely to result in further negative findings by the Ombudsman (with the associated reputational and financial implications) and a further finding of breach of the consumer standards when considering the high probability of an inspection by the Regulator of Social Housing in early 2024.

- 4.3 If Option 2 is preferred, it is anticipated that the Compensation Policy, and subsequent intervention into complaints at an earlier stage, will lead to a reduction in negative Ombudsman determinations, greater customer satisfaction and significant evidence of compliance with the Regulator of Social Housing's Consumer Standards when the Council is inspected.
- 4.4 It is therefore recommended that Cabinet endorse the recommendation to implement the Compensation Policy as drafted.

5 Consultation

- 5.1 The draft Compensation Policy has been shared with the Housing Ombudsman for comment and approval that it meets the requirements of both the Complaint Handling Code and the guidance on remedies.
- 5.2 The draft Compensation Policy has been shared with City Housing's Finance Partner for approval. The implementation of this policy will not result in a greater financial commitment than the current budget; it is not anticipated that the allocated budget for compensation will be breached – only that responsibility for agreeing awards from this budget will be centralised within one team rather than directorate-wide.
- 5.3 All drafts of the Compensation Policy have been shared with Legal Services for comment and approval.
- 5.4 City Housing Liaison Board and the subsequent Local Housing Liaison Boards have been consulted throughout the development of this policy. In addition, the Council have consulted with groups like Birmingham Fair Housing Campaign and the Poverty Truth Experience on their experiences of housing. We also undertook several focus groups whilst developing and drafting the Asset Management Strategy. Their feedback has informed the development of this policy.
- 5.5 Feedback from recent tenant satisfaction surveys and complaints data has informed the content of this policy. This has been a deliberate decision in an attempt to learn from complaints and understand the root cause of dissatisfaction across the service.

6 Risk Management

- 6.1 There are some risks associated with this policy.
- 6.2 The most apparent risk is that an increase in the ability to offer compensation at an early stage will result in greater expenditure on compensation from the allocated

budget. The service already has a flexible budget to respond to compensation requests and it is highly unlikely that compensation will become unaffordable based on historic payments. It is anticipated that this risk will be mitigated by early compensation payments resulting in fewer complaints to the Ombudsman and, in the event that tenants pursue a case with the Ombudsman, reduced compensation orders where the Council has proactively awarded compensation in line with that which the Ombudsman would have awarded.

- 6.3 There is a risk that making more timely compensation payments in resolution of a complaint may incentivise some tenants to submit repeated/multiple complaints or to encourage other tenants to do so in the knowledge that the Council is seeking to resolve complaints by making payments.
- 6.4 This will be mitigated by ensuring that compensation is only offered where there is evidence of a service failure or quantifiable loss where compensation is justified and in line with the Ombudsman's guidance, and robust and regular monitoring of payments made to identify trends and, where possible, seeking to implement service improvements to resolve the issues resulting in compensation being paid in order to stem any repeat claims for similar reasons.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 This policy aligns with the Council's Corporate Plan 2022-26, in particular in relation to A Bold Inclusive Birmingham. Tenant Satisfaction Measures and interventions from the Ombudsman and the Regulator of Social Housing have confirmed that residents feel distant from the Council as a landlord and that the Council does not treat residents' complaints fairly or in a timely manner. The implementation of this policy will enable the Council to demonstrate to residents that complaints are treated with appropriate seriousness and in accordance with the Council's obligations to the relevant statutory bodies.

7.1.2 This policy also aligns to the ambition to provide a Bold Safe Birmingham; by providing an effective mechanism for responding to and resolving complaints to the satisfaction of all parties, residents will feel more invested as tenants and have a greater sense of engagement with their community. This may also contribute to a reduction in homelessness as tenants feel supported to remain in their accommodation and that the Council makes realistic efforts to resolve issues, rather than tenants feeling the need to seek rehousing in order to escape issues that the Council has not satisfactorily resolved.

7.2 Legal Implications

7.2.1 This policy relates only to discretionary compensation and will have no impact on other areas of tenant redress (for example Disrepair and Litigation/Personal Injury claims) where compensation may be offered/awarded as part of a resolution process.

7.3 Financial Implications

7.3.1 Compensation payments are funded from each service's front line budgets. This policy does not directly create any additional commitment beyond the currently budgeted amounts, but where there is any overspend it will be further funded from within the relevant service's budget. Historically this spend is around £1m per annum, and managers work to this level of expenditure being required from their budgets, but since the figure is variable this is monitored and reported monthly at DMT to ensure that no pressure is created on the Council beyond the overall allocated cash envelope.

7.4 Procurement Implications (if required)

7.4.1 There are no perceived Procurement Implications; the Head of Category (Place) has reviewed the policy and raised no concerns.

7.5 Human Resources Implications (if required)

7.5.1 The HR People partner has reviewed and approved the policy and has raised no concerns. It has been reiterated that the policy needs to be supported by clear procedures that underpin the implementation of compensation awards and clearly set out the process for assessing and making compensatory payments as this has previously not been the case. Draft procedures have been produced and are currently under review.

7.6 Public Sector Equality Duty

7.6.1 The Equality Impact Assessment is attached (Appendix 4).

8 Background Documents

8.1 Housing Ombudsman Paragraph 49 Report

8.2 Birmingham City Council, Regulatory Notice

List of appendices accompanying this report:

Appendix 1 – Housing Ombudsman Paragraph 49 Report

Appendix 2 – Regulator of Social Housing Breach Notice

Appendix 3 – City Housing Compensation Policy

Appendix 4 – Equality Impact Assessment

Appendix 5 – Environment Sustainability Assessment