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Compensation and Ex-Gratia Policies and Procedure

1. **Compensation and Ex-Gratia Payments Policy: p1-5**
 2. **Compensation and Ex-Gratia Payments Procedure: p6-11**
 3. **Statutory Compensation Policy (Tenants of permanent accommodation only) – p12-14**
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PRHA Compensation and Ex-gratia Payments Policy

Introduction

1. PRHA seeks to provide the highest possible standards of customer service to its residents. However, it may be that occasionally these standards are not met. We acknowledge that should this be the case that it could inconvenience and cause distress to residents. In such cases we would seek to investigate such incidents and where deemed applicable, offer appropriate compensation.

The Housing Ombudsman states that a Compensation Policy should also emphasise that there are other remedies available to put a situation right but that in some instances, financial compensation may be the only and appropriate form of redress.

The Policy should be read in conjunction with The Complaints Policy.

Policy Purpose

2. The purpose of this policy and procedure is to set out the circumstances where compensation may be payable and that payments are fair and proportionate. Such payments are always at the discretion of PRHA. PRHA's first priority is to resolve and address service failures, we will not offer compensation in every instance or on an automatic basis. Each case will be considered on its individual merits and discretion and common sense will be applied, while promoting consistency.

3. Ex gratia payments once agreed will be processed within 2 weeks. Where a resident is in arrears all ex gratia payments (not home loss, statutory payments nor decant move costs) will be paid to the residents rent account if the resident is in arrears.

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Main provisions of Policy

Circumstances in which compensation will be issued

4. In compliance with the Housing Ombudsman's guidance our policy separates compensation payments into categories and explain in what circumstances payments will be made. It reflects that there are three types of compensation and ex gratia payments:

- Mandatory (such as statutory home loss payments, disturbance etc. as outlined within the Statutory Compensation Policy section on page 12 of this document).
- Quantifiable loss payments (where people can demonstrate actual loss, e.g. having to pay for alternative accommodation or take away food, or carrying out repairs where the landlord has failed to meet its obligations). Such costs must have been reasonably incurred and evidence of such loss provided.
- Discretionary payments (known as ex gratia payments).


5. PRHA will consider a discretionary (ex gratia) payment under the following circumstances.

- Where there is judged to have been poor complaint handling by PRHA.
- Where a service request has not been met within published timescales
- Where a tenant has been unable to use part of the property they occupy which is due to an act or omission on the part of PRHA
- Where there is a reduction or loss of amenities/services which are the responsibility of PRHA.
- When PRHA fails to carry out a qualifying emergency repair within the specified timescales as detailed in the requirements of the Right to Repair.
- Where a resident is required to leave their home temporarily or permanently in the case of major works or refurbishment or the tenant is required to permanently leave their home in the case of redevelopment (Assured, Assured Shorthold Tenants only).

Other remedies

6. Other actions may be taken to remedy a complaint either separately from or in conjunction with an offer of compensation. These can include practical actions such as gestures of good will (e.g. vouchers, chocolates).

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Tenure

7. All General needs tenancies are let on assured or assured shorthold tenancy agreements. Some supported housing accommodation is let on a licence. Licensees generally have few rights to statutory compensation. Also some of the Associations property is intended only as temporary accommodation and therefore is not eligible for compensation. This policy specifies whether specific parts refer to tenants or licensees or both (collectively referred to as "residents" within the text). Where the policy only applies to tenants in permanent accommodation this is made explicit.

Responsibility

8. The Director of Operations is responsible for the effective implementation of this policy. Ensuring that all staff involved in the implementation of this policy are aware of it and can use it as a means to deal with resident dissatisfaction.

9. The Director of Finance is responsible for ensuring that no compensation payment conflicts with PRHA's Finance policies.

10. All staff are responsible for ensuring they follow this policy and procedure.

11. Statutory provisions and/or Housing Ombudsman guidance will be used to apply other compensation payments including the Right to Repair, Home Loss and Disturbance payments or act as benchmarks to calculate the level of compensation.

Policy Details

Situations where compensation will not be considered

12. Compensation will not be payable where the loss of service is attributable to damage or misuse by the residents, or circumstances beyond PRHA's control e.g. loss of utility supplies.

13. Compensation will not be considered where legal action is being taken or contemplated either by PRHA or the resident or where the matter is being processed via an insurance claim.

14. The following principals will be applied in deciding compensation:

- Whether the matter should be processed via insurance
- Whether any financial loss is directly attributable to the acknowledged service failure
- Whether the claimed loss is supported by receipts, bills, or other documents (in the majority of cases this is considered to be a reasonable requirement

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by PRHA, however discretion may be applied depending on the circumstances of each individual situation).

- Where the matter/complaints or compensation issues are being dealt with through any legal or court action.


15. Any claims for inconvenience or distress caused must be raised within 28 days of the situation they relate to, and will be considered on their individual merits taking account of:

- The length of time taken to resolve the subject of the claim
- Any exceptional worry, distress or inconvenience caused by the sequence of events.
- Any unreasonable amount of time and effort the complainant has had to spend seeking to resolve the matter.
- Having to live in unreasonable conditions as a consequence of a failure to complete repairs within timescale.

16. Compensation will not be considered payable in the following circumstances where:

- The problem or service failure has caused little or no inconvenience or distress to the resident
- Accidental damage has occurred due to events which could not have been predicted. For example burst pipes, blocked drains or other such events which could not have been predicted.
- Access has been refused or contractors have not been able to arrange access to carry out repairs with the tenant.
- PRHA has met its statutory or contractual obligations
- Loss or damage has been caused by a third party e.g. gas, electricity and water suppliers. Loss or damage caused by PRHA's contractors may be referred to the contractor and / or the contractors' insurance company.
- Loss or damage has been caused by the tenant, a member of their household or a visitor.
- Damage or loss is a consequence of work carried out by the tenant or where there have been unauthorised works.
- Legal action is being taken or is contemplated by either PRHA or the resident or where the matter is being processed via an insurance claim.
- There are exceptional reasons for the delay such as inclement weather or specific parts for a repair are not immediately available.
- Loss of income or pay for time off work.
- The loss is due to ASB or misuse of facilities or services e.g. vandalism or misuse of lift, doors, gates or where it is due to negligence by the resident or failure to comply with their tenancy agreement.
- A claim for personal injury is being pursued

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17. Where compensation is being offered, the payment will be credited to the rent account and will first be used to offset any arrears or debts the resident may have. Any exceptions to this, such as expenses incurred during decant periods, are limited and are outlined later within this policy. See the section on "Major refurbishment or redevelopment resulting in Permanent or Temporary Decant". **Please note where a resident's rent account is in credit then compensation will be made via Bacs (bank transfer) or in exceptional circumstances cheque or cash payment.**

Any payment made will be regarded as full and final settlement of any complaint, dispute or claim.

18. Discretionary payments may be authorised by the Head of Department within agreed limits set out in the financial procedures as a gesture of goodwill and to further good landlord-tenant relationships, where there has been inconvenience caused to the tenant but no formal claim made for compensation or ex gratia payments.

Ex-Gratia Payment

19. Whilst all claims for damages for disrepair should be referred to our insurers, ex-gratia payments up to a limit of £100 may be made by a member of the SLT to cover such items as:
- The reimbursement of reasonable costs which were incurred during the service loss
 - In recognition of extra heating or cooking costs whilst the facilities are unavailable

Damage to resident's personal items will not be covered as this should be covered under the resident's contents insurance.


Appeals

20. Residents dissatisfied with a decision on compensation or ex-gratia payment may appeal to the Director of Operations. If this does not resolve the matter satisfactorily the resident can invoke PRHA's formal complaints procedure.

The Director of Operations may award directly an additional amount of up to £50 without prejudice.

21. Should a resident refer a complaint to the Independent Housing Ombudsman Service who subsequently recommends a compensation payment be made, PRHA will consider and comply with any orders and recommendation made by the Housing Ombudsman Service.

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PRHA Compensation and Ex-Gratia Payments Procedure

Responsibilities

The Complaints and Compliance Officer is responsible for overseeing compensation payments within financial limits in accordance with the Payments procedure.

PRHA's Finance Department is responsible for processing payments.

Procedure Detail

1. The Complaints and Compliance officer will review all claims for compensation or goodwill (ex gratia) payment for consistency with PRHA's policies and procedures.
2. PRHA will determine in each individual case that a valid claim has been made and that compensation is appropriate. PRHA will require sufficient supporting evidence from the resident to make such a decision.
3. When compensation claims are linked to complaints, they will be dealt with in line with our Complaints Policy and procedure.
4. **If the resident owes money to PRHA in respect of rent or service charge arrears any compensation will be first used to clear this debt and the remaining sum being made payable to the resident.**

When Compensation is payable

Loss of room facilities

5. In circumstances where a resident is unable to use some parts of the property they occupy due to reasons for which PRHA is responsible, compensation may be payable. If the loss of use of part of the property causes significant inconvenience to the resident, any agreed compensation will be calculated with reference to the number of rooms affected as a proportion of the rent.

Loss of amenities

6. Where the resident loses the use of amenities due to a factor that PRHA is responsible for, compensation may be paid to the resident. Compensation is not payable in cases where there has been a loss or reduction in amenities beyond the control of PRHA.

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7. Where PRHA is responsible for the loss of heating and/or hot water and the loss has been more than 7 days, compensation will be paid as a percentage of the net rent. For heating (but not hot water) this is dependent on the season i.e. whether the loss is within the period of Summer (1st April to 30th September) or Winter (1st October to 31st March).
8. For amenities covered by a service charge PRHA will calculate the payment due by calculating the number of days the service was not available multiplied by the service charge levied over the period.

Major refurbishment or redevelopment resulting in Permanent or Temporary Decant.

(Please note decant costs in relation to removal, food where applicable, redirection of mail and miscellaneous costs will be paid direct to the resident and not towards arrears)


9. Where a resident is required to leave their home they will be compensated. (Assured or Assured Shorthold residents only)

In instances where a resident is required to move in order for PRHA to carry out major works or improvements, they will receive assistance for removals expenses including the reasonable costs of:

- Arranging the removal company
- Food support and other costs as specified in the table below. To support the resident during a temporary move if it is to a serviced apartment/decant flat a one off payment of £70 will be made.
- Disconnection/reconnection charges for utilities
- Redirection of mail for a set period (up to 3 months)
- Miscellaneous expenses such as an amount to assist towards replacing flooring, damaged furniture and paintwork. – costs must be in line with PRHA set costs for replacing items and agreed before order – PRHA will not cover costs that are above reasonable replacement values.

move to serviced apartment/decant flat	One off support payment of £70. If apartment is not in the immediate area then a £10 per day travel payment is applicable
decant to a hotel	Breakfast to be included in hotel costs. Maximum £15 payment per day for other food and travel costs. (receipts must be provided)

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10. In some cases residents may qualify for statutory home loss and disturbance payments, which are payable when:
- Their move is a permanent one
 - The move is necessitated by the redevelopment or demolition of the property
 - The resident has lived in the property as their only or principal home for a minimum of 12 months immediately before the move.

**** Please see Statutory Compensation Policy (page 12)****

Loss or damage affecting the resident

11. Residents must provide details in writing of the loss or damage and the sum they wish to claim in compensation. In all situations proof of purchase must be made available. At the discretion of PRHA, in the absence of proof of purchase being available photographic evidence of damaged items must be produced. In addition PRHA may wish to have an independent valuation of the damaged item or to obtain quotations for the cost of cleaning, repairing or replacing the item. Residents must keep any item that is damaged until the claim has been settled to their satisfaction. The details of such claims will be sent to PRHA's insurance company who will look into the claim where appropriate on a case by case basis. The amount payable will take into account the full circumstances of the case and the age and condition of the resident's property. Please note where items have been damaged due to matters outside PRHA control such as flood, power outage etc. then PRHA will not cover the costs of replacing such items.
12. In the event a contractor has caused damage through insufficient care PRHA will pass on details to the contractor or the contractor's insurers.
13. This policy is not intended to replace or compensate a resident for not having a home contents insurance policy, which is the resident's responsibility to have in place. Residents will be expected to make a claim on their home contents insurance where it is deemed reasonable to do so.
14. Residents are encouraged to take out comprehensive household contents insurance to ensure that they are covered for any situations where PRHA is not liable.
15. Compensation payments are approved and processed in accordance with PRHA's financial policies and procedures.

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Service Failures, Delays and Reimbursements.

16. PRHA classifies repairs in line with the Repair Response time standards. If PRHA fails to attend a repair as specified, the resident may contact PRHA for follow up action. We will treat this as a service request. Where no action or delayed action takes place subsequently then this is seen as a service failure as below.

Failure to complete repairs

17. PRHA will normally complete repairs on the day they are first attended. Should there be genuine reasons for extending completion of a repair over a longer period these will be explained to the resident.
18. If the repair is still not completed following the second timescale set, the tenant may claim compensation up to a maximum of £10 per week up to a maximum of £50.

Loss of Rooms or Facilities

19. Rent is paid for the use of dwellings and the provision of services. All properties need repairs from time to time but where failure to do these results in the loss or severe limitation of use of rooms or services for unreasonable periods a rent rebate will be made as part of any other compensation payable (subject to a maximum of 100% rebate) of the weekly rent.
20. All compensation or ex gratia payments will take effect one week (7 days) after the loss is first notified to PRHA. During this initial period works will be raised in order to resolve this matter.

Rental calculation payments will be made on weekly set rent amounts.

complete loss of living room or 1 or more bedrooms	20% of rent
partial loss of living room or bedroom	10% of rent
complete loss of use of kitchen	20% of rent
partial loss of use of kitchen	10% of rent
loss or use of bathroom where combined WC	20% of rent
loss of heating (Oct to March only)	10% of rent
loss of hot water	10% of rent
loss of water supply due to PRHA	20% of rent
partial loss of water supply due to PRHA	10% of rent
loss of electricity supply due to PRHA	20% of rent
partial loss of electricity supply due to PRHA	10% of rent

Ex Gratia Payments

21. Discretionary payments may be authorised within agreed limits as a gesture of goodwill to further good landlord resident relationships where minor inconvenience might have been caused to the resident.

Ex-gratia payments may include payment for:

- Damage to property or decorations as a result of negligence by a PRHA employee or contractor. Please note this does not replace residents' home contents insurance policies rather is a gesture of apology.
- Unacceptable delays in providing services which have resulted in serious distress or inconvenience to the resident.
- Unacceptable responses to upheld or partially upheld complaints which have caused distress, dissatisfaction or inconvenience.
- Where the resident has incurred additional costs as a result of a failure in service. (please note receipts must be provided)

Ex gratia payments for delay and distress will be made based on a judgement of the level of PRHA's responsibility for the loss or inconvenience experienced, and the impact on the resident. This matrix sets out the maximum payment that can be made.

PLEASE NOTE EX GRATIA PAYMENTS CAN BE IN ADDITION TO ANY IDENTIFIED PAYMENTS FOR LOSS OF PROPERTIES AND AMENITIES

Where residents are in arrears all payments will be made directly into their rent and service charge account.

Level of PRHA's responsibility	Low Impact	Medium Impact	High Impact
None	£0	£0	£0
Partial	£10	£25	£60
Full	£20	£50	£100


Low Impact

A complaint has been upheld, or a request for compensation has been made in relation to a reported service failure outside of the complaints process, where there has not been significant inconvenience or distressed caused. Impact has been no more than a reasonable person could be expected to accept and compensation is a token in acknowledgement of PRHA's responsibility.

Medium Impact

Inconvenience and/or distress has clearly been caused as a result of a failure in service. A repeated failure of a low impact event could result in the impact being increased to a medium impact.

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High Impact


A serious failure in service has taken place. This could either be due to the severity of the event or a persistent failure has occurred over a prolonged period of time or an acceptable number of attempts to resolve the complaint have failed.

Payments should take into account the level of stress, anxiety, frustration, uncertainty and inconvenience caused. This will include the severity, length of time taken to resolve the service failure, number of people effected and their individual circumstances.

Quantifying losses

22. PRHA must seek to quantify the losses and verify any amounts claimed by obtaining copy receipts or other documentation from the resident.

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Statutory Compensation Policy (Tenants of permanent accommodation only)

1 Home Loss

- 1.1** If a tenant of permanent accommodation is required to move permanently from their home because of compulsory purchase or because the Association needs to carry out improvements, re-development, regeneration, but not major repairs, they are entitled to compensation for the loss of their home. This is a legal requirement and the terms are laid down in the Land Compensation Act 1973 and the Planning and Compensation Act 1991.
- 1.2** Home loss payments are made in recognition of the personal distress and inconvenience suffered by people who are displaced from their homes as a result of qualifying circumstances. Sub-tenants have no right to a home loss payment.
- 1.3** To qualify for a home loss payment the following conditions must be met:
- the displacement must be permanent
 - the displacement must be as a result of improvement or redevelopment
 - the tenant must have occupied the dwelling as his/her only residence for at least one year (unless occupied by a successor)
 - the tenant must have been in occupation by virtue of a legal interest or right
- 1.4** Tenants moving permanently are eligible for a one-off fixed payment of £2,500 in recognition of their displacement.
- 1.5** This payment may be used in part or full to offset any monies due to the Association at the time of payment, e.g. rent or service charge arrears
- 1.6** The time limit for claiming a home loss payment is the statutory limitation period of 6 years and the Association must make the payment within 3 months of the claim being agreed.

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1.7 Once the decision to carry out improvements/redevelopment that will lead to the permanent loss of a home has been taken by the Association, we will:

- give the tenant 3 months' notice of re-improvement works and at least 1 month notice of any major repairs
- offer to visit in their homes
- call a meeting for all those affected
- suggest that tenant takes independent legal and financial advice
- inform them of their rights and legal entitlements in relation to Home Loss payments
- Be aware that the involuntary loss of one's home can be very distressing and therefore the officer's general approach to tenant should be sympathetic and supportive.
- Home Loss will be met by PRHA and budgeted for as part of the improvement/re-development scheme feasibility.
- Any Home loss payment should be divided equally between joint tenants, unless they jointly agree to some other arrangement. If one of the joint tenant has disappeared and it can be established that the property is no longer their only or main home, then the remaining tenant gets the full payment.

2 Disturbance

2.1 The Planning and Compensation Act also gives tenants of permanent accommodation the right to claim all reasonable expenses involved in moving out of one home and setting up in another.


2.2 The amount payable:

- Should extend to those expenses incurred "as a direct and natural consequence of moving".
- Should be reasonable and necessary and the claimant should take steps to mitigate those as far as possible.
- Must not cover costs incurred for the purpose of "betterment". For example, the Association will not reimburse the tenants costs for new curtains or carpets where reasonable adjustment/alteration is possible.

Supporting invoices may be required by the Association. The guidelines for calculating the payments are laid down in the same legislation as that for Home loss. Reasonable expenses will generally include;

- removal contractor's costs
- disconnection and reconnection costs for the TV aerial, telephone, cooker, plumbed-in washing machine and other installations,
- a contribution towards the cost of alterations to existing soft furnishings (e.g. carpet and curtains) or, where the original item(s) cannot be re-used the Association will contribute to the cost of their replacement.
- re-direction of mail up to a period of 3 months.

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- 2.3** The Association encourages tenants to transfer all their furniture and personal effects to their temporary home. In exceptional circumstances, the Association may contribute to the cost of storage or provide storage for a short period (up to one month)
- 2.4** Officers should follow the procedure set out in 1.8 above and the cost of these payments will be met by PRHA and budgeted for as part of the improvement/re-development scheme feasibility. The payment will be made to the tenant who incurred the expenses.
- 2.5** Tenants disputing their entitlement to disturbance payments may appeal to the Land Tribunal. Appeals must be made within 4 weeks of the Association's decision and addressed to:

Upper Tribunal (Lands Chamber)
45 Bedford Square
London
WC1B 3DN

Tel: 020 7612 9710

Fax: 020 7612 9723

Typetalk: 18001 020 7612 9710

Email: lands@hmcts.gsi.gov.uk

3 Major repairs (TENANTS OF PERMANENT ACCOMODATION ONLY)

- 3.1** Tenants of permanent accommodation do not have a statutory right to compensation for a permanent or temporary move, if required for repairs/major repairs. However, the Association will pay their removal expenses on the same basis as a disturbance payment.

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