



# **Right to Compensation for Improvements Policy**

Date of Approval  
November 2019

Review Due  
November 2022

## Executive Summary

<b>Brief Overview:</b> Update of the Association's right to compensation for improvements policy which is reviewed every three years.
<b>Risks:</b> Low
<b>Relevance to Business Plan:</b> N/A
<b>Financial Implications:</b> N/A
<b>Equalities:</b> N/A
<b>Regulatory Impact:</b> Sections 30 and 109(2) of the Housing (Scotland) Act 2001
<b>Recommendations:</b> None

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## **1. GENERAL AIMS OF THE POLICY**

- 1.1 The Association's policy will comply with statutory requirements, Scottish Homes Guidance and "Performance Standards for Registered Social Landlords", and best practice documents such as "Raising Standards in Housing".
- 1.2 The authority for the Right to Compensation for Improvements is set by Statutory Instrument 2002 No. 312; and the Regulations came into force on 30<sup>th</sup> September 2002. The legislation to which these regulations refer is shown at Sections 30 and 109(2) of the Housing (Scotland) Act 2001.
- 1.3 This policy deals ONLY with compensation. Staff should refer to the policy on the Tenants Right to Improve for the conditions and requirements for consent to an improvement or alteration.

This is especially relevant in the context of the landlord's ability to refuse consent to and "improvement" or the ability to impose conditions to consent.

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

- 2.1 The tenant must have the written consent of the Association prior to making the improvement. The Association has discretion to grant retrospective consent.
- 2.2 The improvements must qualify in terms of the list of Qualifying Improvements as detailed in Appendix 1.
- 2.3 The qualifying improvement work must have been started after 30<sup>th</sup> September 2002
- 2.4 Compensation can only be paid at an end of tenancy.
- 2.5 Compensation will not be paid if the calculated amount is less than £100.00. The Association, however, has discretion to compensate for a value less than £100.00.
- 2.6 The maximum compensation payable will be £4000.00.

## **3. QUALIFYING PERSON**

- 3.1 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.

- 3.2 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.

#### **4. EXCEPTIONS**

4.1 Tenants will not qualify for compensation if:-

- a) the claim for compensation for improvement is submitted to the Association after 21 days from the termination date
- b) they exercise their Right to Buy,
- 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.

#### **5. MAKING A CLAIM**

- 5.1 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.
- 5.2 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 it is given to the alteration.

- 5.3 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 Elderpark Housing) or other source.
- 5.4 The regulations are silent about whether any VAT paid by the tenant is part of the total cost on which compensation can be calculated. In line with the Association's policy for the Right to Compensation for Improvements, VAT must be excluded from any calculation for compensation.
- 5.5 Tenants can be asked to provide receipts to support a claim for compensation. However, it is not unreasonable that the landlord should have obtained this information at the time of consenting to the improvement. In the absence of any receipts, the tenant should be asked to provide an estimate of the original cost.
- 5.6 The Association must assess the reasonableness of any cost or estimated 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 have the benefit of any contract costs or economics of scale available to the landlord.
- 5.7 If no receipts or invoices are available, the Association is required to make a reasonable decision as to whether or not the work was undertaken by a qualified contractor (see 8.1 (c) below).
- 5.8 The Association shall respond to a claim for compensation for improvement within 28days from the date of claim.

## **6. CALCULATION OF COMPENSATION**

- 6.1 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 – see para 7.4.

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.

6.2 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.

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

6.4 Depreciation for the elapsed time since installation of the improvement will be calculated on the straight line method. Part years will be counted as full years. The formula to be used is expressed:

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

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 (inc part years) that have elapsed since the improvement was completed.

6.5 The lower financial limit of compensation for any one improvement has been set at £100.00. After the calculation in paragraph 6.4 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.

6.6 The upper financial limit of compensation for any one improvement has been set at £4000.00. If the amount payable after the calculation in paragraph 8.4 is more than £1,500.00, the landlord is not required to pay amount in excess of this figure. The Association therefore has discretion to do so. There is presently no upper limit to reimbursement in the voluntary scheme.

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

## 7.0 PAYMENT

7.1 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, his

share of any compensation paid and he will have no further claim against Elderpark Housing Association.

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

- a) A rent arrear.
- b) a housing benefit overpayment recovery.
- c) a rechargeable repair.

## **8.0 DECISION MAKING AND APPEALS**

8.1 If the qualifying tenant 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, have the position reviewed or reconsidered.

8.2 Where a review or reconsideration is required, the original decision shall:-

- a) be reviewed by an independent valuer or surveyor who took NO part in making the original decision, appointed for the purpose or review by the landlord
- b) by one or more members, committee members or board members (who must have taken NO part in making the original decision)
- c) be reconsidered by all the landlord's members, committee members or board members

8.3 Qualifying tenants are entitled to make written representations and/or make oral presentations accompanied by a representative of their choice before the person or persons undertaking the review or reconsideration.

8.4 Straightforward cases falling within policy guidelines will be dealt with by Association staff.

8.5 Routine appeals will be considered by the Maintenance Manager and any decision subsequently reported to a Sub-Committee.

8.6 Complicated cases and other appeals may be referred to a Sub-Committee at the discretion of the Maintenance Manager or at the request of the Tenant.

8.7 Any Tenant who is dissatisfied with a decision should first speak to, or write to the Maintenance Manager who will respond within one month indicating the outcome of the appeal.

8.8 If a Tenant is still dissatisfied with a decision they may appeal to a Sub-Committee. The appeal will be considered at the next available Sub-Committee meeting and the Tenant notified of the outcome within one week of the meeting.



- 8.9. If a Tenant is dissatisfied with the decision of the Sub-Committee a final appeal can be made to the Management Committee. The Tenant will be allowed to present their own case in person or have representation at this stage.
- 8.10. 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.
- 8.11. Irrespective of the above, Tenants may raise a formal grievance under the Association's published complaints procedure (copies are available at the office).
- 8.12. Tenants can obtain advice and information about their remedies from a local Citizens Advice Bureau or a Solicitor, or a representative.
- 8.13. Tenants may also have a complaint referred to the Scottish Public Services Ombudsman once they complete the Association's published complaints procedure and are still dissatisfied.
- 8.14. If for any reason of disability or impairment a Tenant is unable to complain or appeal to the Association formally then he / she may authorise a representative to write on his / her behalf.

## **9. MONITORING**

- 9.1 The Association will regularly assess the impact and take-up of the Tenants Right to Compensation for Improvements and will report to committee annually covering,
  - 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.

## **10. RENT REVIEW**

If the improvement for which reimbursement has been made is a substantial one, the Association should establish whether the rent for the house should be reviewed, for the subsequent tenant, in line with existing procedures.

## **11. REVIEW**

This policy will be reviewed every three years or as required to assess its effectiveness and to consider any changes required in the light of experience, new guidance, good practice, and legislation.

## **12. APPENDICES**

- 1 List of Improvements and notional life.
- 2 Application for compensation Form

<b>LIST OF IMPROVEMENTS</b>	<b>NOTIONAL LIFE (YEARS)</b>
Bath or Shower	12
Wash Hand Basin	12
Toilet (WC complete)	12
Kitchen Sink	10
Storage Cupboard in Bathroom or Kitchen	10
Work Surfaces or Food Preparation	10
Space or Water Heating	12
Thermostatic Radiator Valve	7
Insulation of Pipes, Water Tank or Cylinder	10
Installation of mechanical ventilation in bathrooms and kitchens	7
Loft Insulation	20
Cavity Wall Insulation	20
Sound Insulation	20
Draught proofing of external Doors or Windows	8
Double Glazing or other window replacement or secondary glazing	20
Rewiring and the provision of power and lighting or other electrical fittings (including mains wired smoke detectors)	20
Security measures, excluding burglar alarm system	15

# ELDERPARK HOUSING ASSOCIATION LIMITED

## 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 Commended</u>	<u>Cost £</u>
1. .... ..... .....	..... ..... .....	..... ..... .....	..... ..... .....
2. .... ..... .....	..... ..... .....	..... ..... .....	..... ..... .....
3. .... ..... .....	..... ..... .....	..... ..... .....	..... ..... .....

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: Elderpark Housing Association Limited  
31 Garmouth Street  
Glasgow  
G51 3PR**

## NOTES TO ASSIST YOU IN COMPLETING THIS FORM

1. When providing details of the cost of work you can include materials and employed labour but not the cost of your own labour or appliances installed. Relevant invoices should be attached to this claim form if applicable, otherwise you must provide an estimate breakdown of costs.
2. You are not eligible for this compensation if you are exercising your right to buy or acquiring the property on rent to loan terms.
3. You are not eligible for this compensation if your improvement was stated before 1 April 1994.
4. You must make your claim within 21 days of your tenancy ending.