

<b>KNOWES HOUSING ASSOCIATION LTD</b>	
<b>Policy Name</b>	Home Loss and Disturbance Payments
<b>Policy Category</b>	Technical Services
<b>Policy Number</b>	MDS08
<b>Date to Committee</b>	July 2021
<b>Previous Review</b>	December 2017
<b>Next Review Date</b>	June 2024
<b>Links to other Policies</b>	
<b>Consultation</b>	Staff & Committee

## **1. OBJECTIVES OF THE POLICY**

The objectives of the policy are to ensure that the Association has clear and fair guidelines in place that comply with the Land Compensation (Scotland) Act 1973 and all relevant staff are aware of the procedure to be followed where development programmes necessitate permanent or temporary removal of tenants from their homes.

## **2. LEGAL FRAMEWORK**

The Land Compensation (Scotland) Act 1973 provides guidance on the circumstances in which home loss payments should and should not be made.

## **3. RISK ASSESSMENT**

The risks that this policy is designed to protect the Association from are:

- Wrongly making a payment of home loss or disturbance to persons not entitled to such payment.
- To ensure that persons entitled to home loss and disturbance payments receive the payment that they are entitled to and avoiding legal action against the Association.

- To ensure that home loss and disturbance payments can be claimed back through HAG funding where applicable or appropriate.

#### **4. HOME LOSS PAYMENTS - QUALIFYING CONDITIONS**

- A claimant must have occupied the property as his/her principle home or main residence for a period of at least one year prior to the date of displacement. (If an owner is letting the property, or a tenant is sub-letting but living elsewhere, no Home Loss will be payable to the owner or tenant).
- The move must be permanent.
- There must be an “interest in the dwelling house”. This means that the claimant must be an assured tenant, a statutory tenant, an employee in a tied property, a spouse with occupancy rights under the Matrimonial Homes (Family Protection Scotland) Act 1981 (as amended) or as any person with “any interest in the dwelling house”.

#### **5. QUALIFYING EVENT**

**The removal must be as a consequence of one of the following:**

- Compulsory acquisition of the property is by a body with compulsory purchase powers.
- Demolition, improvement or closing order under the Housing (Scotland) Act 1987.
- The development of land acquired by an authority with compulsory purchase powers.
- Improvement or redevelopment by a Registered Social Landlord.
- Demolition of a dangerous building.
- A Court Order for recovery of possession proceedings by a Registered Social Landlord, with suitable alternative accommodation being available to the tenant (Ref Paragraph 10 of Part 3 of Schedule III of the Housing (Scotland) Act 1987). This only applies to claimants with secure tenancies.

#### **6. HOME LOSS PAYMENT ENTITLEMENT**

- The entitlement to Home Loss payment is the point at which a decision has been taken to, for example, demolish or radically alter property and that decision has been intimated or made known to a claimant. The knowledge of

a claimant is important because removal must have been in consequence of a decision having been taken and not for any other reason.

- A move must therefore be triggered by a Qualifying Event but it need not be compulsory at the time it is made. Even if a claimant could have remained in the property longer, Home Loss is payable if all other qualifying conditions are satisfied. Registered Social Landlords must therefore assess the primary reasons for a claimant's move, with the facts and circumstances of each claimant's case being taken into account.

## **7. LEVELS OF COMPENSATION**

- There is a flat rate Home Loss payment of £1,500 for each tenanted household. Therefore, if two or more persons are entitled to Home Loss payment in respect of one property, the payment of £1,500 will be divided equally between them.
- Owners are entitled to 10% of the market value of their property, as determined by the District Valuer or other professionally qualified Valuer, subject to a minimum payment of £1,500 and a maximum payment of £15,000.

## **8. TIMESCALE FOR PAYMENT**

- Home Loss payments must be claimed in writing and must include such particulars as the landlord may require. Any claim for payment must be made within five years from the date of removal. The five year period includes any time that a claimant might have required to raise a court action to obtain payment.
- Where a claimant is eligible for Home Loss payment, it must be paid on or before the last of the following dates.
- The date of displacement.
- The last day of the period of three months commencing from the date the claim was made.
- The day on which the market value of the property is agreed or finally determined. This is relevant if a claimant is an owner.

## **9. REFUSAL OF PAYMENT**

- When Home Loss payment is refused, the reasons for this should be given to claimants in writing as soon as the decision to refuse payment has been made.

## **10. EXAMPLES OF SITUATIONS WHERE THERE MAY BE ENTITLEMENT TO HOME LOSS PAYMENT.**

- When a claimant has moved, after a decision to demolish has been taken, there will be a presumption in favour of removal in consequence of demolition, unless there are clear indications that this was not the case. For example, the claimant had made an application to lease or an offer to purchase another property prior to the date on which the decision to demolish appears, from case law, to be the date on which the Registered Social Landlord makes demolition its preferred option or decides that demolition will take place.
- The Act also makes provision for Home Loss payments if a claimant's property is radically altered, subject to all other eligibility criteria having been met. The Act does not define "radically altered" although case law suggests that alterations must be structurally significant.
- Where tenants or owners have been decanted into temporary accommodation, Home Loss payments are triggered by removal from the original property. An additional Home Loss payment should not be available when tenants or owners move from temporary accommodation to new permanent accommodation.
- If a claimant cannot satisfy the one year qualifying period but was previously displaced because of a Qualifying Event, and the cumulative periods amounted to more than one year, Home Loss will be payable. The Registered Social Landlord must ensure that a claimant provides the necessary evidence of previous tenancies and displacements. For the avoidance of doubt, the Act refers to periods of occupation rather than ownership or tenancy. Thus, periods of occupation, even when the claimant was not an owner or a tenant, may count.
- A Registered Social Landlord may also make a discretionary payment (not exceeding £1,500) if a claimant cannot satisfy the one year qualifying period but can satisfy the other qualifying conditions on the date of displacement.
- The circumstances under which discretionary payments are appropriate may vary but, as a general rule, payments should be made in order to prevent either delay or significant lengthy court recovery of possession proceedings or to avoid the use of Scottish Housing Regulator or local authority compulsory purchase powers.
- All payments made will be made not withholding any outstanding monies owed to the Association.

## **11. SUCCESSION**

- The successor of a person who was entitled to receive Home Loss payment but who died without claiming it may claim so long as he or she is over 18 and

has lived in the property for at least one year up to the date of removal. To qualify, however, successors must have been entitled to benefit from the deceased's estate.

## **12. MULTIPLE OCCUPANCY**

- Where a person occupies a dwelling in one part of a property and then moves to another dwelling in the same property (e.g. bedsits), time spent in each part will qualify.

## **13. SUB LETTING**

- Although there are no reported cases on claims from sub tenants of owners, it seems likely that they would be eligible, if they meet the conditions given above.

## **14. DECANT AND DISTURBANCE**

- The following will be followed in situations where tenants and owners require to be decanted as a result of improvement or development works.
- Prior to the removal, tenants and owner-occupiers will be visited by the Association's Housing Officer to confirm their requirements.
- At this stage particular care will be taken to note any special requirements (particularly medical cases) to ensure as far as possible that tenants and owner occupiers are offered temporary accommodation suitable to their needs.

### **The Association will ensure that any offer of temporary accommodation is:**

- Equivalent to the size of the house currently occupied, bearing in mind the limitations of the Association's stock.
- Is medically suitable for the household to which it is offered.
- Is in a clean and habitable condition and is generally in good decorative order.
- When the Housing Officer has identified the requirements of each tenant/owner, the tenant/owner will then be matched to a property as close as possible to their needs (subject to availability). An offer then will be made to the tenant/owner.
- In the event of temporary accommodation being refused, then the tenant/owner will be required to provide the reason(s) for refusal in writing. If

the reason(s) is/are considered valid by the Association's Director, a second offer will be made to the tenant/owner, subject to the availability of housing.

- In the event of a second offer being refused without a valid reason, a report will be submitted to the Management Committee for a decision on whether the Association will proceed with legal action to ensure vacant possession.

## **15. REMOVAL DETAILS**

**The following services will be provided free of charge to tenants and owners:**

- The tenant/owner will be required to pack and unpack their belongings. A reputable firm will be employed to carry out the removal. Aged or infirm tenants may be given assistance to pack. The Housing Officer will identify requirements at the initial visit.

### **Fixed Domestic Appliances**

- Such as cookers or automatic washing machines are disconnected and reconnected by qualified tradesmen. Where a tenant/owner is moving to a decant house, they are temporarily connected there for his/her use.

### **Storage**

- Where it is necessary, storage facilities will be provided.

### **Gas/Electricity**

- All meters are read as the tenant/owner leaves their home, and again when they return. The Contractor is then billed directly for all units used by him in the tenants/owners absence. All meter readings in decant accommodation are verified with the tenant/owner on arrival and again on departure. The tenant/owner will be responsible for the units used during their occupation of the decant accommodation. The Association will pass all meter readings to Utilities Provider.

### **Use of Appliances**

- In certain circumstances, tenants/owners in decant houses have to be provided with temporary heating and cooking facilities, e.g. should a tenant/owner use a gas cooker and is decanted to a house with no gas facility, an electric cooker is provided, on loan. The Association will also provide a temporary TV aerial if requested by the tenant/owner.

### **Telephones**

- The tenant/owner arranges to have these disconnected when the tenant/owner moves out of their home and reconnected on his/her return to

the modernised property. The Association will pay all charges connected to this. Tenants/owners must continue to pay their telephone rental charges, even though the appliance is disconnected.

- As a rule, the Association will not pay for the connection of telephones to decant accommodation. It will, however, make exceptions on medical grounds. Any tenant/owner wishing to have a telephone connected because of a medical condition should provide the Association with a Doctor's certificate confirming loss of telephone would be hazardous to the patient's health.

### **Re-Direction of Mail**

- The Association will cover re-direction of mail for the tenant/owner only.

## **16. OWNER OCCUPIERS**

- Owners will be provided with rent free decant accommodation for the duration of the period.

## **17. EQUALITIES STATEMENT**

- 17.1 Knowes Housing Association Ltd is committed to tackling discrimination on the grounds of sex or marital status, racial grounds, or grounds of disability, age, sexual orientation, language, social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.
- 17.2 Knowes seeks to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination in all areas of our work.

## **18. Appeals Procedure**

- 18.1 Any tenant who feels aggrieved by their treatment under this Policy can ask for a copy of the Association's Complaints Policy which is available at the Association's office or on the Association's website.
- 18.2 Tenants also have a right to complain to the Public Services Ombudsman. The Complaints Policy details the way in which Tenants can complain and the timescales for responding.