



# **OAK TREE HOUSING ASSOCIATION**

## **Home Loss and Disturbance Policy**

Adopted	May 2001	Last Reviewed	June 2011
Next Review Due	August 2020		

## **1.0 INTRODUCTION**

- 1.1 In accordance with the Land Compensation (Scotland) Act 1973 and subsequent amendments. Housing Associations have to strictly adhere to specific guidelines on how Home Loss and Disturbance payments are claimed and subsequently paid.
- 1.2 The Legal Services Agency Ltd's publication, a Home Loss and Disturbance Payments, clearly explains the legal requirements pertaining to Home Loss and Disturbance Compensation. This Policy and subsequent Procedures have been based on the legislative requirements noted in this publication.

## **2.0 POLICY OBJECTIVES**

- 2.1 To clarify the criteria governing an applicant's eligibility for Home Loss and Disturbance.
- 2.2 To define the procedures for claiming Home Loss and Disturbance.
- 2.3 To identify the personnel responsible for processing Home Loss and Disturbance claims.

## **3.0 POLICY STATEMENT**

- 3.1 The Association agrees that those people considered eligible for a Home Loss or Disturbance payment should be encouraged by the Association to make the appropriate application.
- 3.2 A Home Loss payment is compensation for personal upset caused to people who have been compulsorily moved from their homes.
- 3.3 A Disturbance payment is compensation for the actual expenses of such a move.
- 3.4 Entitlement to these payments depends on meeting a variety of criteria but does not depend on proving fault on the part of the Landlord.

## **4.0 LEGISLATIVE REQUIREMENTS**

Under the Land Compensation (Scotland) Act 1973, Home Loss and Disturbance Payments will be paid to tenants and owners displaced due to demolition or other redevelopment proposals affecting their home.

We will pay Home loss and disturbance payments only when a decision to demolish has been approved by our Management Committee that affects our tenants and homeowners. The relevant date will be the date of the meeting at which the decision was approved.

In exceptional circumstances, payments may be made where a tenant is forced to leave the property shortly before the relevant date of the decision to demolish is declared (e.g. tenant fleeing domestic abuse or discriminatory harassment).

## 5. HOME LOSS

### 5.1 Eligibility

To be eligible for a Home Loss payment claimant's must:

- Have a legal interest in the dwelling (e.g. they must be a tenant, an owner occupier, live in a tied house, or be a spouse with matrimonial occupancy rights)
- Have been moved as a direct consequence of one or more of the following circumstances:
  - a) Compulsory Purchase Order
  - b) Demolition, Improvement or Closing Order made by the Local Authority
  - c) Improvement, demolition or redevelopment by Oak Tree Housing Association
  - d) Demolition under any other compulsory power e.g. Building (Scotland) Act 1959
  - e) Court Order for eviction from secure tenancies, granted to allow demolition or work.  
If the tenant agrees to move out before the Court Order is granted, there is no right to payment
- Have lived in the house for more than one year at the date of moving, unless: they had been forced (because of one of the above events) to move from a previous home as well, without receiving a Home Loss payment and the total combined residence in the two houses is more than one year.
- The tenant or homeowner must be in occupation of the house in question on the relevant date.
- The move must be permanent. The tenant must have a Scottish Secure Tenancy Agreement (SST), be a spouse with occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, or any person with any "interest in the dwelling house".

### 5.2 Entitlement

Tenants are entitled to a 'flat rate' Home Loss payment of £1,500 and owner occupiers are entitled to 10% of the market value of their home up to a maximum of £15,000 and a minimum of £1,500.

### 5.3 Procedure Regarding Home Loss Claims

Forms for claiming Home Loss payments will be issued to qualifying owners and tenants by the Association at the appropriate time. Claims must be made within 5 years of the removal date. On receipt of the completed forms the Association will then forward applications to the Finance Section with payment requested by the Manager of the section dealing with the application. Any outstanding liability e.g. rent arrears or rechargeable repairs will be deducted from the payment made.

In any event payment should be made no later than the latest of the following dates:

- a) Date of removal
- b) Within 3 months of making the claim
- c) For owner occupiers, the date when the valuation of the houses is agreed (and hence the level of Home Loss payment)

## 6.0 DISTURBANCE

Subject to qualifying conditions similar to home loss, disturbance payments are payable to both tenants and homeowners.

Unlike Home Loss Payments, there is no statutory provision as to the amount of the payment. Section 35 of the Land Compensation (Scotland) Act 1973 merely refers to “reasonable expenses...” with the Lands Tribunal being given the task of determining any disputes.

We will pay up to £700 to compensate our tenants and homeowners for any reasonable expenses incurred in moving from a house due to demolition or other redevelopment proposals affecting their home. Any Tenants or homeowners who dispute this amount will need to provide receipts to demonstrate their ‘reasonable’ expenses.

### 6.1 Eligibility

To be eligible for a Disturbance payment claimant's must :-

- Have been in ‘lawful possession’ of their house at the ‘relevant’ date (this may include cohabitants with occupancy rights and licensees)
- Have moved permanently
- Their move must have been as a direct consequence of one of the events listed in item 4.1 above for Home Loss entitlement, except when the move resulted from an eviction order

The ‘relevant’ date will be:

- a) The date of the Compulsory Purchase Order or possibly the date of drafting
- b) The date of the Local Authority Demolition, Improvement or Closing Order
- c) The date the occupier is required to move as a consequence of Demolition under the Building (Scotland) Act 1995
- d) The date the decision was taken by the Management Committee in respect of the improvement, demolition or redevelopment by Oak Tree Housing Association

In respect of Compulsory Purchase the claimant would not get a Disturbance payment if they were already entitled to compensation under another provision

### 6.2 Entitlement

Disturbance payments are for the ‘reasonable expenses’ of moving –. It includes all expenses reasonably incurred during the move, in addition to the move itself.

Where tenants, owners or shared owners are being decanted, accepting a direct move or have moved voluntarily as a result of improvement or demolition works the Association will make a one off payment of £700 towards reasonable expenses incurred. There may be occasions when due to the tenant's individual circumstances and with their agreement that the Association will, arrange and pay for the following:-

- removal expenses (excluding packing)
- telephone disconnection/reconnection (where applicable)
- cooker disconnection/reconnection
- automatic washing machine disconnection/reconnection (where applicable)
- dishwasher disconnection/reconnection
- mail redirection for three months
- removal and re-installation of TV aerials where necessary

There is no closed list of items which the one off payment can be used for.- Additional items could include .e.g.

- cost of refitting existing carpets
- cost of fitting new carpets limited to the number of rooms in the old house
- cost of fitting an alternative floor covering
- adapting existing curtains for the new house and the cost of making up new ones (not the cost of materials)
- adapting existing curtain rails

The tenant or owner may be asked to submit receipts for all items when making a claim to the Association.

Only one payment will be made in respect to tenants, owners and shared owners being decanted and moved back in after improvement. The claim should also be made once the tenant or owner has moved back to either the new or newly improved property.

### 6.3 Procedure

Where a one off payment has been agreed, this will be paid to the tenant or owner when they have accepted their new property. Alternatively, forms for claiming Disturbance payments will be issued to qualifying owners and tenants by the Association at the appropriate time. There is no formal time limit in respect of making a claim. On receipt of the completed forms the Association will request authorisation from a Senior Officer and forward a payment request to the Finance Section. Any outstanding liability e.g. rent arrears or rechargeable repairs will be deducted from the payment made.