

REPORT TITLE: HOME LOSS AND DISCRETIONARY PAYMENT POLICY

21 NOVEMBER 2018

REPORT OF PORTFOLIO HOLDER: Cllr Caroline Horrill

Contact Officer: Deborah Sunley Tel No: 01962 848 248 Email
dsunley@winchester.gov.uk

WARD(S): ALL

PURPOSE

This report seeks approval of the Home Loss and Discretionary Payment Policy.

This new policy establishes procedures for compensating tenants whose property is directly affected by the council's planned development proposals. The policy provides guidance and procedures to Officers to implement either statutory or discretionary compensation as appropriate.

RECOMMENDATIONS:

1. That the Home Loss and Discretionary Payment Policy is approved.
2. That delegated authority is given to the Corporate Head of Housing to approve discretionary and statutory compensation.
3. That delegated authority is given to the Corporate Head of Housing to authorise and sign Demolition Notices.

IMPLICATIONS:

1 COUNCIL STRATEGY OUTCOME

- 1.1 The Council's Strategy 2017 -2020 recognises "delivering quality housing options" and "improving the quality of the District's environment." The procedures set out in the Home Loss and Discretionary Payment Policy will improve the ability of officers to progress planned development proposals, and minimise disruption.

2 FINANCIAL IMPLICATIONS

- 2.1 Owing to the small number of properties which will be affected, there will be limited financial implications as a result of the policy. Statutory compensation is a mandatory fixed amount and discretionary compensation will not exceed the statutory amounts. The current statutory home loss payment is £6,300. Compensation payments will be considered as part of the viability test for the scheme and will be included in the overall scheme costs.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 Home Loss and Disturbance Payments are a statutory requirement and provided for in the Land and Compensation Act 1973. There will therefore be legal resources involved, particularly to ensure compliance with statute. Any works procured by the Council using discretionary payments to meet the cost will be in accordance with the Council's Contract Procedure Rules as set out in the Council's constitution.

4 WORKFORCE IMPLICATIONS

- 4.1 No additional implications

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The policy meets the Housing Strategy 2017/18 – 2022/23 priorities to accelerate and to maximise the supply of high quality housing across the District and to make best use of housing.
- 5.2 Winchester City Council's Development Strategy sets out that consideration will be given to buying properties back (which may include gardens) when this enables access to wider development opportunities or supports adjacent site development.

6 CONSULTATION AND COMMUNICATION

- 6.1 The Corporate Head of Housing and the Portfolio Holder for Housing have been briefed on the policy. In addition, members of the Legal team, Housing Options and Allocations, New Homes and Housing Management have been briefed and consulted on the policy. Recommendations have been subsequently incorporated into the policy.

7 ENVIRONMENTAL CONSIDERATIONS

7.1 None

8 EQUALITY IMPACT ASSESSEMENT

8.1 An Impact Assessment has been undertaken. No outcomes were considered necessary following this assessment.

9 DATA PROTECTION IMPACT ASSESSMENT

9.1 None required.

10 RISK MANAGEMENT

Risk	Mitigation	Opportunities
<i>Property</i>	Improvement to existing stock through planned development work.	Gaining support of affected tenant(s) through compensation and enables planned development work and supports positive community consultation.
<i>Community Support – lack of support for development proposals</i>	The policy enhances support, improves communication with tenants and provides opportunities to gain community support to proposals. There are also opportunities to manage tenant expectations and continue the supply of council housing.	Positive working with the local community supports future development proposals.
<i>Timescales - risk of compromising development timescales.</i>	The policy encourages tenant support to planned development.	Policy provides ability to progress planned development proposals to timescale, avoiding delays.
<i>Project capacity - ability of officers to meet the aims of the Home Loss and Discretionary policy.</i>	Use of monitoring to ensure consistency and effectiveness of the policy will be put in place once policy adopted.	Facilitates efficiency to meet the new homes targets, on timescale.
<i>Financial / VfM– minimum risk</i>	Statutory payments are mandatory fixed payments. Discretionary	

	payments will not exceed statutory levels. Any appropriate compensation payments will need to be considered within the scheme financial viability.	
<i>Legal – potential for payments being made or refused inappropriately</i>	Statutory payments are mandatory, fixed payments. Discretionary payments will not exceed statutory levels. Monitoring will ensure any payments are in compliance with statute and policy.	Policy allows better communication and outcomes with affected tenants and provides for consistency and transparency
<i>Innovation</i>		Policy allows better communication and outcomes with affected tenants.
<i>Reputation</i>	The policy mitigates against negative reputation by managing tenant expectations.	Ability to communicate with tenants on development proposals supports community consultation. Opportunity to avoid court action. Manages tenant expectations. Increased opportunity of enhancing reputation as a result of positive outcomes.
<i>Other</i>		

11 SUPPORTING INFORMATION

- 11.1 This new policy has been written in the context of the council's target for delivering new homes over the next few years. Over recent years there have been occasions where the council's planned development programme has involved developing on part, or some of a tenant's property for example developing on all or part of a tenant's garden.
- 11.2 In these few cases, there has been no procedural guidance to support Officers to communicate with affected tenants. In addition, the absence of a policy has meant that there is not any basis for offering any kind of discretionary compensation for the loss of say, a garden. It is considered that without any basis, this leaves scope for inconsistency and additionally, may result in the council having to seek possession of the property in order to progress planned development works.

- 11.3 In addition, it is considered that there may be instances where the council may seek approval for the demolition of a property in order to progress planned development works. In these instances, statutory compensation, which is governed by legislation, is appropriate. The Council does not currently have a policy to support officers with any procedural guidance on statutory compensation.
- 11.4 Therefore, the “Home Loss and Discretionary Payment Policy” aims to provide guidance to Officers at operational level to communicate with tenants whose homes may be directly affected by the council’s planned development programme and provide guidance on compensation. The policy establishes a fair, transparent and consistent procedure and outlines the process of communication with tenants to determine the appropriate type, and level of compensation.

Details of Policy

- 11.5 The policy provides details on both statutory and discretionary compensation and provides guidance to officers when these forms of compensation are appropriate.
- 11.6 The following legislation is referenced and outlines that tenants will be compensated according to the relevant legislation.
- Land Compensation Act 1973
 - Housing Act 1985
 - Planning and Compulsory Purchase Act 2004
 - Localism Act 2011
- 11.7 In summary, the different types of compensation are as follows:
- 11.8 *Statutory Compensation – Home Loss Payment*
This is a statutory payment made to compensate tenants who are required to move out permanently as a result of redevelopment or demolition of their home. The policy provides details on when this type of compensation is appropriate and when tenants are eligible. Home Loss payments can be made where the council has obtained possession by agreement of a secure tenancy under Part 1V of the Housing Act 1985.
- 11.9 *Statutory compensation - Disturbance Payments*
A disturbance payment is compensation provided under the Land Compensation Act 1973 Sections 37 and 38. It is statutory compensation which can be made to displaced tenants, resident freeholders or leaseholders who are required to move to another property temporarily. It can also be paid to tenants who have lived in the property for less than 12 months and therefore not entitled to Home Loss but are required to move home permanently due to redevelopment or improvement.

No specific figures are set by the legislation but a Disturbance Payment should cover the reasonable costs of moving and setting up home and is

meant to compensate for necessary expenses involved from moving from one property to another in order that the tenant is not out of pocket. It is not a statutory amount. It should be an amount equivalent to the reasonable expenses of the person.

11.10 *Discretionary compensation*

Discretionary Payments are payments made over and above the council's legal obligations and can be made under provisions in the Localism Act 2011 where tenants do not qualify for Home Loss or Disturbance payments. Discretionary payments can be used to compensate tenants who may lose all or part of their garden for example, as a result of the council's proposed development works. In these instances, tenants need to agree to a variation in their tenancy.

By virtue of the discretionary nature of this compensation there is no limit imposed on the payment but this policy proposes that discretionary payment should not exceed the maximum statutory payment.

The policy is written on the premise that the costs and benefits of making a discretionary payment are justified when balanced against the cost of seeking legal possession of the property. The guidance confirms that wherever possible, seeking possession of the property should be a last resort and could be resolved by the offer of discretionary compensation.

Procedures

- 11.11 Further to an explanation of the different types of compensation involved, the policy sets out procedures for officers to follow when communicating with affected tenants as well as key internal teams, such as Legal and Housing Management. These procedures cover both discretionary and statutory compensation. It also provides key information on the principles of and the serving of Demolition Notices.

Conclusion

- 11.12 The Home Loss and Discretionary Payment Policy provides a fair, transparent and consistent procedure for communicating with tenants whose property is directly affected by the council's planned development proposals. It provides guidance to officers to understand the differences between the various types of compensation available, and in particular, identifies the differences between statutory and discretionary compensation. In addition, it supports officers to determine whether compensation payments are appropriate for those tenants directly affected by planned development proposals.
- 11.13 It enables Officers to identify the appropriate type and level of compensation and outlines the circumstances in which discretionary compensation may be paid to tenants. This has previously been open to inconsistency.

11.14 The policy ensures that any tenants affected by development proposals are consulted at the appropriate stage and throughout the development process. It also seeks to minimise disruption and avoid any unnecessary delays to the development programme by averting ongoing disputes between affected tenants and the council.

12 OTHER OPTIONS CONSIDERED AND REJECTED

12.1 The alternative, not to make discretionary payments has been rejected in the interests of supporting the council's planned development programme.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

None

Other Background Documents:-

None

APPENDICES:

Appendix 1 Home Loss and Discretionary Payment Policy

WINCHESTER CITY COUNCIL

HOME LOSS AND DISCRETIONARY PAYMENT POLICY

DRAFT

INTRODUCTION

This policy explains the process for compensating tenants whose property is directly affected by the Council's planned development programme. It outlines the process of communication and consultation with such tenants to determine the appropriate type and level of compensation.

In some cases the compensation is controlled by legislation. This is referred to as statutory compensation and this policy outlines the key points of statutory compensation. The policy is also intended to provide clear guidelines on when it is appropriate to offer discretionary compensation, and in what form.

1 PURPOSE AND AIM

The aims of this policy are:

- 1.1. To establish a fair, transparent and consistent procedure for dealing with tenants whose property is directly affected by the Council's planned development proposals and to consider who may be entitled to compensation.
- 1.2. To understand the differences between the various types of compensation available, and in particular, to identify the differences between statutory and discretionary compensation (non-statutory).
- 1.3. To support officers at operational level to determine whether compensation payments are appropriate for those tenants directly affected by planned development proposals.
- 1.4. To enable officers at operational level to identify the appropriate type and level of compensation. In particular, the policy outlines the circumstances in which discretionary compensation may be paid to tenants as a result of the council's development proposals.
- 1.5. To provide guidance on non-statutory payments i.e. discretionary compensation, and to establish a basis for making offers of support to those tenants directly affected by the Council's development proposals.
- 1.6. To ensure that any tenants affected by development proposals are consulted at the appropriate stage and throughout the development process.
- 1.7. To minimise disruption and avoid any unnecessary delays to the Council's planned development programme by averting ongoing disputes between affected tenants and the Council.

2 SCOPE OF THE POLICY

- 1.8. This policy includes both statutory and non-statutory compensation and provides procedures for officers to deal with the various forms of tenant compensation.
- 1.9. In recognition of the way non-statutory or discretionary compensation can be subjective and open to interpretation, the policy is intended to specifically support operational officers to determine if, and in what form, it is appropriate to offer discretionary compensation to tenants affected by the Council's development proposals.
- 1.10. Statutory compensation is also included in the policy in order to provide operational officers with a broader overview of this form of compensation to ensure officers know when, and who may be entitled to statutory compensation. Officers should always seek the advice from the Legal team when dealing with statutory compensation.
- 1.11. Although the policy is chiefly intended to consider compensation when dealing with the Council's development proposals, the policy may be used to offer discretionary compensation in other areas. Such cases will be decided by the Corporate Head of Housing and considered on its own merits.
- 1.12. For the purposes of this policy, "tenants" include both secure and introductory council tenants. Discretionary compensation will not be paid to tenants who are exercising their Right to Buy or where the tenant has been served a Notice of Seeking Possession and is subject to a Court Order.

3 ELIGIBILITY

- 1.13. Only tenants and joint tenants named on the tenancy agreement will be eligible to receive any form of compensation. Lodgers, or any other persons not named on the tenancy agreement are not eligible for compensation.
- 1.14. The policy does not apply to people placed in temporary accommodation (under section 188 or section 193 of the 1996 Housing Act (as amended)), and other non-secure tenants or people who are unauthorised occupants, sub-tenants, lodgers or licensees.
- 1.15. Tenants with rent arrears or other debts to the council including rent deposit arrears, will not receive discretionary financial payment. For those tenants with rent or rent deposit arrears, any discretionary financial

compensation which may be considered appropriate will be deducted or off-set from their rent account. Different rules apply for statutory compensation which are also covered in this policy (see section 6).

4 RELEVANT LEGISLATION

The following legislation has been referred to in this policy. Tenants will be compensated according to the relevant legislation.

- a. Land Compensation Act 1973
- b. Housing Act 1985
- c. Planning and Compulsory Purchase Act 2004
- d. Localism Act 2011

5 THE DIFFERENT FORMS OF COMPENSATION

Legislation exists to financially compensate tenants in a number of situations. There are different types of compensation and it is important to understand these in order to determine which, if any, tenants are entitled to. The following forms of compensation are covered in this policy.

STATUTORY COMPENSATION	DISCRETIONARY COMPENSATION
Home Loss Payments and Disturbance Payments	Compensation agreed as part of this policy for delivery of the New Homes programme

6 STATUTORY COMPENSATION

HOME LOSS PAYMENT

- 6.1 This is a statutory payment made to compensate tenants who are required to move out **permanently** as a result of redevelopment or demolition of their home. It is designed to compensate for the stress and inconvenience caused by the move, for example, in demolition cases.
- 6.2 A person is not entitled to receive a Home Loss Payment if only their garden or part of their garden, or outbuildings is acquired. In this instance, the Council may consider that discretionary payments would be appropriate (see section 7).
- 6.3 Home Loss Payment may be given in addition to a statutory Disturbance Payment (see below). It is not payable to tenants who temporarily move out of their home and are able to return to their original property once the work is completed. However, if the area is being demolished and rebuilt

and the tenant returns, the tenant would be entitled to Home Loss payment because they would be returning to a completely new home.

- 6.4 To be eligible, the tenant must move as a result of the redevelopment, it cannot be because they wanted to move and had achieved a transfer in the usual manner under the allocations policy.
- 6.5 The Home Loss Payment is a mandatory fixed payment set by S30 (2) of the Land Compensation Act 1973 and is currently £6,300. As the thresholds are subject to change by the Secretary of State, the levels of payment will be reviewed each time this policy is used.
- 6.6 In all cases, Home Loss Payments are limited to one per household. If joint tenants claim, the amount will be divided equally between them. This should be documented by a disclaimer accordingly.
- 6.7 If a tenant is required to move from their home permanently as a result of development, the tenant should be given the option of transferring to alternative accommodation, based on their rehousing needs and consistent with the Scheme of Allocation. However, in this scenario, the tenant may not be entitled to Home Loss compensation. However, they may be entitled to Disturbance Payments to cover the reasonable expenses of moving (see 6.22 to 6.27).
- 6.8 Home Loss Payments can be made, where the Council has obtained possession by agreement of a secure tenancy under Part IV of the Housing Act 1985 and the circumstances set out in that part have been fulfilled. (1)
- 6.9 It is the responsibility of the tenant to make a claim and the tenant or joint tenant is required to have lived in the property as their principal home for at least 12 months prior to the date of displacement and is required to move out of their home permanently, as a result of the property being demolished, sold or remodelled.

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¹ Where a landlord obtains possession by **agreement** of a dwelling subject to a secure tenancy within the meaning of Part IV of the Housing Act 1985 and (a) notice of proceedings for possession of the dwelling has been served, specifying ground 10 or 10A in Part II of Schedule 2 to that Act, or (b) the landlord has applied, to the Secretary of State for approval for the purposes of ground 10A of a redevelopment scheme including the dwelling, the landlord may make to [any person giving up possession or occupation] a payment corresponding to any home loss payment [or discretionary payment] which they would be required [or authorised] to make to him if an order for possession had been made on either of those grounds.

- 6.10 Where the tenant dies without having claimed the Home Loss Payment, a claim for Home Loss may be made by any person, (not minors) who has lived in the dwelling for a minimum of one year, ending with the date of displacement. In such cases, the claimant must have lived in the dwelling as his only or main residence and have rights to the succession of the tenancy.
- 6.11 If tenants have rent arrears, the Council should obtain permission from the tenant (usually in the form of a disclaimer) for the tenant to agree that the Council can deduct any outstanding amounts owed from the Home Loss Payments. Whilst there is no legal reason why Disturbance Payments cannot be withheld, these payments are likely to assist tenants to move to alternative accommodation so Disturbance Payments should be paid to tenants whether or not they are in arrears.
- 6.12 If the Council organise and pay for a move to alternative accommodation, Disturbance Payments could be offset against outstanding monies owed to the Council.
- 6.13 Applications for the Home Loss Payment must be made in writing by the tenant. Accepted claims must be paid within the time limit set out in S32 of the Land Compensation Act 1973. By law, the Council must make the Home Loss Payment to the tenant on or before the latest of the date of displacement or three months from the date of the claim.
- 6.14 Legal action to gain possession of tenanted properties will be a last resort. Where possible, the council will move secure tenants by agreement. However, where this is not possible, the council reserves the right to seek possession through the legal process, in which case the applicable criteria for rehousing will be as defined by legislation.
- 6.15 The Council has powers under the Housing Act 1985 to seek possession of a property that is earmarked for redevelopment. Grounds 10 of Schedule 2 of the Housing Act 1985 allows a court to grant a possession order where the Council intends to redevelop a property, and cannot reasonably do so without obtaining possession. Ground 10A allows the court to grant possession where the property is in an area subject to a redevelopment scheme approved by the Secretary of State. In both cases the court must be satisfied that there is suitable alternative accommodation available.

- 6.16 The issuing of a Final Demolition Notice would allow a tenant to be prioritised for a move to suitable accommodation in accordance with the Scheme of Allocation. See link: [Hampshire Home choice](#)
- 6.17 If a tenant moves from their property via the Scheme of Allocation before the Final Demolition Notice has been issued, the tenant may not be entitled to Home Loss Payment.
- 6.18 The issuing of a Final Demolition Notice would allow the tenant to claim for the Home Loss Payment.
- 6.19 All Home Loss Payments will be authorised by the Corporate Head of Housing.
- 6.20 The Council will make payment once the keys are returned for the property, as long as this is within the time limits, but Home Loss Payment cannot be restricted. If the tenant leaves items in the property, the Council reserves the right to dispose of these once the keys have been returned. The tenant may be recharged for this.
- 6.21 Where the tenant does not meet the criteria for Home Loss Payment, the tenant may be eligible for discretionary compensation

DISTURBANCE PAYMENTS

- 6.22 A Disturbance Payment is compensation provided under the Land Compensation Act 1973 Sections 37 and 38. It is statutory compensation which can be made to displaced tenants, resident freeholders or leaseholders who are required to move to another property temporarily. It can also be paid to tenants who have lived in the property for less than 12 months and therefore not entitled to Home Loss but are required to move home permanently due to redevelopment or improvement.
- 6.23 Tenants who are eligible for a Home Loss Payment (or: who are entitled to statutory compensation) and are required to move out but who do not meet the criteria for a Home Loss Payment, are entitled to Disturbance Payments.
- 6.24 No specific figures are set by the legislation but a Disturbance Payment should cover the reasonable expenses of the person. It is to cover reasonable costs of moving and setting up home and is meant to compensate for necessary expenses involved from moving from one property to another in order that the tenant is not out of pocket. It is not a statutory amount. It should be an amount equivalent to the reasonable expenses of the person.

- 6.25 The value of disturbance payments will vary according to the circumstances of each household. Costs covered may include removals, disconnection and reconnection of cooker, washing machine, dishwasher, landline telephone reconnection, the redirection of post, and the refitting of carpets.
- 6.26 Reimbursement may be considered where the expense incurred has been as a direct result of the move and could not have been avoided. However, payment will only be made if legitimate receipts can be provided and the expense has been agreed in advance with a council officer. This should be authorised by the Corporate Head of Housing.
- 6.27 In cases where upfront payments for moving costs by tenants would cause hardship, the council can provide payments directly to approved contractors. These should be considered on a case by case basis.

7. NON-STATUTORY COMPENSATION

- 7.1. Discretionary payments are payments made over and above the Council's legal obligations and can be made under provisions in the Localism Act 2011 where tenants do not qualify for Home Loss or Disturbance Payments.
- 7.2. By virtue of the discretionary nature of this compensation there is no limit imposed on the payment but any discretionary payment should not exceed the maximum statutory payment as this would not be equitable.
- 7.3. Discretionary payments can be used to compensate tenants who may lose all or part of their garden as a result of the Council's proposed development works. In these instances, tenants need to agree to a variation in their tenancy.
- 7.4. This policy is based on the premise that the costs and benefits of making a discretionary payment are justified when balanced against the cost of seeking legal possession of the property. Therefore, discretionary payments can be made to tenants to ensure a positive working relationship with tenants and assist in securing community support for development proposals.
- 7.5. Discretionary compensation may be made to tenants who have to move out of their home permanently because their length of residency does not qualify them for any Home Loss Payment.

- 7.6. Discretionary payments can be used as an incentive to move, where, for example, a tenant has not been resident in the property for over a year and therefore, is not entitled to Home Loss Payment.
- 7.7. There may also be other instances where it is considered appropriate to make discretionary payments to tenants and these will be considered on a case by case basis and approved by the Corporate Head of Housing.
- 7.8. Discretionary compensation is **not** intended to be paid for the loss of general amenity space. The loss of any amenity space will be mitigated in the development proposals and all tenants in the area should benefit from the proposed mitigation.
- 7.9. Discretionary compensation is for council tenants and will not therefore be paid to tenants who have exercised their Right to Buy or where the Council tenancy ends as a result of a Court Order.
- 7.10. Tenants should not receive discretionary compensation if an alternative incentive award has been granted for example, a downsizing award.
- 7.11. The Council needs to ensure a consistent and reasonable approach in making discretionary payments to tenants and should recognise that discretionary compensation may be made to tenants in the context of the Council's planned development programme.

8. PROCEDURAL GUIDANCE FOR OFFICERS WORKING WITH TENANTS AFFECTED BY DEVELOPMENT PROPOSAL

- 8.1 If development proposals include demolition of a tenant's property, the New Homes Officer should notify the Housing Finance Manager of key dates and development proposals. This will allow the Housing Finance Manager to deal with any potential Right to Buy applications at the earliest opportunity (see section 9).
- 8.2 If the development proposals include plans either to demolish a tenant's property or take part of, or the whole of the garden, officers from the New Homes and Housing Management teams should visit the tenant at an appropriate time once there is formal cabinet approval to proceed with the development.
- 8.3 Prior to this visit, officers should establish any potential concerns or issues such as vulnerabilities of the tenant(s) and whether there are any tenancy issues such as rent arrears. The length of tenancy should also be established as this is important in determining the type of statutory compensation payments which may be appropriate. The New Homes

Officer should also clarify the names on the tenancy agreement and if the tenancy is sole or joint.

- 8.4 Prior to the visit, the New Homes Officer, in partnership with Housing Management, should discuss with the Legal team whether the tenant is entitled to statutory or discretionary compensation.
- 8.5 Officers should be mindful that a tenant's entitlement to statutory compensation may not be determined at this point. This is because entitlement to statutory compensation may be subject to the timescale of development and whether a tenant's housing needs may be met through the social housing register prior to a Final Demolition Notice being served. In such cases it is unlikely that Home Loss Payment would be made.
- 8.6 Following discussions with the Legal team, if it is considered that the tenant **may** be entitled to statutory compensation, the New Homes Officer should meet with the Head of Housing Options and Allocations to discuss alternative housing solutions which may be available to the tenant, once the Final Demolition Notice (in the case of demolition) has been served. This may be a direct match offer.
- 8.7 If a tenant is required to move from their home permanently, the tenant should be given the option of transferring to alternative accommodation based on their rehousing needs in accordance with the choice based lettings scheme. If the tenant moves to alternative accommodation, via the social housing register, the tenant may not be entitled to Home Loss compensation.
- 8.8 Entitlement to Home Loss compensation would usually be triggered by the serving of the Final Demolition Notice (section 32 of the Land and Compensation Act 1973). The Final Demolition Notice will usually be triggered by the Council requiring the tenant to move. The Council has to be confident of the timescale for demolition at the time of serving this notice.
- 8.9 The affected tenant, depending upon the circumstances, may also be entitled to Disturbance Payments to cover the reasonable expenses of moving (see section 6.22 to 6.27).
- 8.10 Officers should visit the tenant to discuss the development proposals and the impact this may have on the tenant's property. It should be made clear to the tenant at this stage, that the tenant's entitlement to statutory compensation (if this is relevant) may depend on the timescale of the development and whether they choose to bid on the housing register

before any requirement to move. Giving precise timescales of the development proposals to the tenant should be avoided at this stage.

- 8.11 In cases of demolition of property, the serving of an Initial Demolition Notice will enable affected tenants to join Hampshire Home Choice to enable them to move through the choice-based lettings system and affected tenants should be advised of this.
- 8.12 Where possible, the Council will move secure tenants by agreement. Legal action to gain possession of tenanted properties will be a last resort. However, where this is not possible the Council reserves the right to seek possession through the legal process.
- 8.13 The Council has powers under the Housing Act 1985 to seek possession of a property that is earmarked for redevelopment. Grounds 10 of Schedule 2 of the Housing Act 1985 allows a court to grant a possession order where the Council intends to redevelop a property, and cannot reasonably do so without obtaining possession. Ground 10A allows a court to grant possession where the property is in an area subject to a redevelopment scheme approved by the Secretary of State. In both cases a court must be satisfied that there is suitable alternative accommodation available for the tenant(s).
- 8.14 In cases of demolition, and where tenants have not already moved through the choice based lettings system, the issuing of a Final Demolition Notice would allow a tenant to be prioritised for a move to suitable accommodation in accordance with the Scheme of Allocation. Please see link: [Hampshire Homechoice](#) this is likely to be a direct match offer of suitable accommodation, consistent with the Scheme of Allocation.
- 8.15 If the tenant is not entitled to statutory compensation, the New Homes Officer should consider whether discretionary compensation may be appropriate. New Homes should discuss with Housing Management whether there may be other incentives to offer which may be more appropriate such as the downsizing incentive.
- 8.16 Following the home visit, the New Homes Officer should provide written confirmation of the visit and confirm the issues discussed, identifying whether the tenant may be eligible for compensation but avoiding precise details and timescales at this stage. The tenant should be advised of a named contact and written contact details. If it is proposed to reduce or take a tenant's entire garden, the tenant should be advised that a variation to the tenancy agreement would be required to be agreed by both parties.

The tenant should be advised in writing to obtain independent legal advice.

- 8.17 If the tenant agrees to a reduction or removal of their garden as a result of the development proposals, the New Homes Officer should liaise with the Legal team. An agreed reduction in what was included in the original tenancy amounts, in law, to a surrender of part. A form of variation should be supplied to be signed by both parties. This should be in writing and include a coloured drawing of the affected garden. The New Homes and Housing Services officers should visit the tenant again to confirm the variation to the tenancy agreement.
- 8.18 If the tenant is entitled to statutory compensation, such as Home Loss Payment, the tenant should be advised, as part of the Final Demolition Notice, when to request this in writing to the Corporate Head of Housing. The Final Demolition Notice will contain prescribed information about claiming compensation.
- 8.19 All correspondence to the tenant must confirm that compensation, whether statutory or discretionary, will only be paid if the development goes ahead and in the case of Home Loss Payment, that the tenant is required to vacate the property permanently.
- 8.20 In cases where the New Homes Officer considers that the tenant may be entitled to discretionary compensation, the New Homes Officer should discuss with a colleague and check the records relating to other cases of discretionary payments, in order to ensure a fair and consistent approach.
- 8.21 The New Homes Officer should establish whether the affected tenant has outstanding rent arrears. If the tenant is in arrears, any discretionary payment agreed should be offset by the level of arrears. If the level of arrears is greater than a discretionary payment, then the tenant will not receive any compensation.
- 8.22 Discretionary payments can be given as cash amounts and credited to a tenant's rent account. However, tenants may wish to have the money issued directly to them if their account is in credit.
- 8.23 Alternatively, for discretionary payments, an amount equivalent to an agreed cash payment may be provided in the form of works, such as the laying of a patio or the purchase and installation of a garden shed for example. These works should, wherever possible, be undertaken by the approved development contractor once the site works for the whole development has started.

- 8.24 The New Homes Officer should provide a recommendation to the Corporate Head of Housing advising whether discretionary compensation should be provided, at what level and in what form. This can only be approved by the Corporate Head of Housing.
- 8.25 Once authorisation is received from the Corporate Head of Housing for discretionary compensation and the tenant is in receipt of the compensation, the tenant should confirm their acceptance of the payment and confirm that they consider the matter closed. This can be provided by a disclaimer. A disclaimer should be accepted and signed by the tenant before the receipt of the payment.
- 8.26 If a tenant is not willing to cooperate and does not agree to a variation to their tenancy for loss or part loss of their garden, or is unwilling to move out and allow for demolition, court proceedings for possession of the dwelling would need to be made.
- 8.27 Officers however, should try to reach an agreement with the tenant prior to court action and officers should be mindful that possession proceedings can be protracted if the Court adjourns cases. In all cases, the Council is required to have offered suitable alternative accommodation. This can include the house that the tenant currently resides in with a reduced garden as the suitable offer, or a completely different property in the case of demolition of the existing house.
- 8.28 As long as all of the necessary legal steps have been taken a court will generally grant possession of a secure tenancy. However, the procedure can be significantly protracted if the tenant defends the application and this should be taken into consideration.
- 8.29 With introductory tenancies where the tenant does not agree to a reduction in the demised area, a notice under s128 of the Housing Act 1996, giving four weeks' notice should be served. Although possession is mandatory, tenants both secure and introductory can still mount a defence under Article 8 of the Human Rights Act.
- 8.30 The notice would not take effect for 28 days, and after the 28 day period the Council could issue court proceedings to gain possession of the dwelling as long as a suitable offer of alternative accommodation has been made.
- 8.31 Once obtained, a Possession Order will suspend the Right to Buy. If the tenant submits a Right to Buy application, then the application cannot be delayed and will run at the same time as the proceedings.

9 DEMOLITION NOTICES: PROCEDURAL GUIDANCE

- 9.1. Demolition Notices are usually issued in two stages. The timing of demolition notices is important as the notices affect Right to Buy applications. Therefore, as soon as formal cabinet approval has been given for demolition, the New Homes Officer should advise the Housing Finance Manager. The Housing Finance Manager should advise the tenant affected by the development of the implications with regard to the suspension of Right to Buy applications.
- 9.2. Initial Demolition Notices should be issued to tenant(s) when formal cabinet approval has been given to the demolition of a property but there is no definitive timescale as to when this might happen. These notices can last for up to seven years. The issuing of the Initial Demolition Notice is more about alerting tenants to the suspension of the Right to Buy and does not mean that demolition is about to begin. An Initial Demolition Notice suspends the tenant's right to complete a purchase of their home under the Right to Buy scheme.
- 9.3. Initial Demolition Notices and Final Demolition Notices will be authorised and signed by the Corporate Head of Housing.
- 9.4. The Initial Demolition Notice will state which properties are intended to be demolished when and why. The notice should also state the validity period of the notice, that Right to Buy claims will be accepted and processed, but that completion will not occur unless the notice becomes ineffective or is withdrawn.
- 9.5. The Initial Demolition Notice will also state that a Final Demolition Notice will end any existing Right to Buy application and that compensation is payable for certain reasonable expenses incurred in relation to an affected Right to Buy application and how to claim it.
- 9.6. A Final Demolition Notice is issued once the Council is confident of the timescale for demolition. No demolition can happen until the Final Demolition Notice is issued.
- 9.7. A Final Demolition Notice replaces the Initial Demolition Notice and is usually issued when a date is set for the demolition to take place. A Final Demolition Notice enables any existing or future Right to Buy applications to be refused and new Right to Buy applications cannot be accepted while this notice is in force. A Final Demolition Notice is valid for two years so demolition would have to take place within this timescale. Only a Final Demolition Notice can prevent a Right to Buy application.

- 9.8.A Final Demolition Notice may be served without an Initial Demolition Notice having been served but where an Initial Demolition Notice has been served the Final Demolition Notice will replace it.
- 9.9.Both the Initial and Final Demolition Notices can be extended at the discretion of the Secretary of State. Either notice can be revoked by the Secretary of State if he or she takes the view that the Council has no intention of developing the properties.
- 9.10. If the Council decides not to demolish buildings or properties affected by a demolition notice, a revocation notice should be served.
- 9.11.The Council is required to publish demolition notices locally, both in the press, any newspaper published by the Council as well as on the Council's website.
- 9.12.If a tenant has established a valid claim to exercise the Right to Buy before either an Initial Demolition Notice or a Final Demolition Notice is served, the tenant has three months in which to claim compensation for expenditure connected with the conveyancing process, such as legal or survey fees. If the Council subsequently decides not to demolish the property, the Council must serve a revocation notice as soon as is reasonably practicable.
- 9.13. No further notice can be served for a period of five years following the time when the relevant notice ceases to be in effect.

10 MONITORING AND AUDITING

- 10.1.For the purposes of auditing, all approved compensation statutory or non-statutory should be recorded, including the tenant's name, address, compensation agreed and the monetary value paid. This document should be updated by the New Homes team and recorded in SharePoint.
- 10.2.The recording of this information will highlight any potential inconsistencies to ensure accountability and fairness.
- 10.3.This policy will be reviewed every three years. Quarterly monitoring of compensation awards will be carried out to ensure consistency, appropriate use of compensation awards and compliance with agreed timescales.

11 SAFEGUARDING

Whilst undertaking home visits, officers should be mindful of the safeguarding of vulnerable adults and children. If officers have any concerns regarding the vulnerability of tenants, or any other adults or children in the property, officers should follow the Council's Safeguarding Policy.

12 LONE WORKING

It is preferable for officers to undertake joint visits to tenants but where this is not possible, the Lone Working procedure should be followed by officers.

13 APPEALS

Appeals by tenants against a decision related to the payment of compensation can be made using the Council's Complaints Procedure.

14 EQUALITY AND DIVERSITY

The Council is subject to the general public sector equality duty in the Equality Act 2010. The Council and its partner Registered Providers are committed to providing equality of opportunity to all individuals.

15 LEGAL ADVICE

It should be noted that the information set out in this policy note regarding statutory Home Loss and Disturbance payments is not exhaustive. It is a simplified guide and does not cover every situation which may arise. It should be not be regarded as a substitute for legal advice and users of this policy should be encouraged to seek legal advice when considering statutory compensation. Tenants should also be encouraged to seek independent legal advice.