

Principles for Remedy



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Good practice with regard to remedies means:

- 1 Getting it right
- 2 Being customer focused
- 3 Being open and accountable
- 4 Acting fairly and proportionately
- 5 Putting things right
- 6 Seeking continuous improvement



Introduction

This document gives our views on the Principles that should guide how public bodies provide remedies for injustice or hardship resulting from their maladministration or poor service. It sets out for complainants and bodies within the Parliamentary and Health Service Ombudsman's jurisdiction how we think public bodies should put things right when they have gone wrong and our approach to recommending remedies.

These *Principles for Remedy* should be read in conjunction with our *Principles of Good Administration* and *Principles of Good Complaint Handling*.

Remedying injustice and hardship is a key aspect of the Ombudsman's work. Not all maladministration or poor service results in injustice or hardship, but where it does, our underlying principle is to ensure that the public body restores the complainant to the position they would have been in if the maladministration or poor service had not occurred. If that is not possible, the public body should compensate them appropriately.

We aim to secure suitable and proportionate remedies for complainants whose complaints are upheld and, where appropriate, for others who have suffered injustice or hardship as a result of the same maladministration or poor service. We want public bodies to be fair and to take responsibility, to acknowledge failures and apologise for them, to make amends, and to use the opportunity to improve their services.

There is a range of appropriate responses to a complaint that has been upheld. These will include both financial and non-financial remedies. Financial compensation will not be appropriate in every case, but public bodies should not rule it out as a form of remedy for justified complaints. We understand that, for public bodies, there is often a balance between responding appropriately to people's complaints and acting proportionately within available resources. However, finite resources should not be used as an excuse for failing to provide a fair remedy.

The Ombudsman's *Principles for Remedy* accords with HM Treasury's guidelines on remedy as set out in *Managing Public Money*¹ and is cited as best practice in the *NHS Finance Manual*².

The Principles set out here are intended to promote a shared understanding of how to put things right when they have gone wrong and to help public bodies in the Ombudsman's jurisdiction provide fair remedies.

¹ http://www.hm-treasury.gov.uk/psr_mpm_index.htm

² <http://www.info.doh.gov.uk/doh/finman.nsf>

Principles for Remedy

Good practice with regard to remedies means:

1 Getting it right

- Quickly acknowledging and putting right cases of maladministration or poor service that have led to injustice or hardship.
- Considering all relevant factors when deciding the appropriate remedy, ensuring fairness for the complainant and, where appropriate, for others who have suffered injustice or hardship as a result of the same maladministration or poor service.

2 Being customer focused

- Apologising for and explaining the maladministration or poor service.
- Understanding and managing people's expectations and needs.
- Dealing with people professionally and sensitively.
- Providing remedies that take account of people's individual circumstances.

3 Being open and accountable

- Being open and clear about how public bodies decide remedies.
- Operating a proper system of accountability and delegation in providing remedies.
- Keeping a clear record of what public bodies have decided on remedies and why.

4 Acting fairly and proportionately

- Offering remedies that are fair and proportionate to the complainant's injustice or hardship.
- Providing remedies to others who have suffered injustice or hardship as a result of the same maladministration or poor service, where appropriate.
- Treating people without bias, unlawful discrimination or prejudice.

5 Putting things right

- If possible, returning the complainant and, where appropriate, others who have suffered similar injustice or hardship, to the position they would have been in if the maladministration or poor service had not occurred.
- If that is not possible, compensating the complainant and such others appropriately.
- Considering fully and seriously all forms of remedy (such as an apology, an explanation, remedial action, or financial compensation).
- Providing the appropriate remedy in each case.

6 Seeking continuous improvement

- Using the lessons learned from complaints to ensure that maladministration or poor service is not repeated.
- Recording and using information on the outcome of complaints to improve services.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying the Principles to produce reasonable, fair and proportionate remedies in the circumstances. The Ombudsman will adopt a similar approach in recommending remedies.

The supporting text for each Principle follows.

1 Getting it right

Where maladministration or poor service has led to injustice or hardship, the public body responsible should take steps to provide an appropriate and proportionate remedy.

The public body should:

- ideally, return complainants and, where appropriate, others who have suffered injustice or hardship as a result of the same maladministration or poor service, to the position they were in before the maladministration or poor service took place
- if that is not possible, compensate them appropriately.

The public body should also ensure they keep any commitments to provide remedies, including ensuring they do not repeat any failures.

In many cases, an apology and explanation may be a sufficient and appropriate response. Public bodies should not underestimate the value of this approach. A prompt acknowledgement and apology, where appropriate, will often prevent the complaint escalating. Apologising is not an invitation to litigate or a sign of organisational weakness³.

It can benefit the public body as well as the complainant, by showing its willingness to:

- acknowledge when things have gone wrong
- accept responsibility
- learn from its maladministration or poor service
- put things right.

In putting right any injustice or hardship suffered as a result of maladministration or poor service, the public body should assess all the relevant circumstances in a balanced way. This means taking into account both objective evidence and more subjective views of the impact of the injustice or hardship. In some cases, the remedy will be easy to work out; in others, it will be more difficult because of the number of factors to take into account.

Offering remedies should not necessarily be limited to formal complaints. A timely response may ensure that the person decides not to make a formal complaint.

³ Section 2 of the *Compensation Act 2006* states: 'An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty'. This section of the Act applies to England and Wales only.

2 Being customer focused

Public bodies should promptly identify and acknowledge maladministration and poor service, and apologise for them.

An apology means:

- acknowledging the failure
- accepting responsibility for it
- explaining clearly why the failure happened
- expressing sincere regret for any resulting injustice or hardship.

In some cases, it may also be appropriate to express sympathy. Public bodies should consider:

- which organisational level the apology should come from
- who should apologise
- the most appropriate form of apology, for example in person, by telephone or in writing.

It is important to manage expectations from the start, and to explain clearly to the complainant what is and is not possible, so they understand what may be achieved for them. It is possible that the complainant may:

- expect too much
- not fully understand their rights and responsibilities
- have contributed to or prolonged the injustice or hardship.

Public bodies should make clear to complainants that remedies aim to:

- return them to the position they would have been in if the maladministration or poor service had not happened, if possible
- compensate them appropriately, if that is not possible.

Public bodies should do the following:

- consider the wishes and needs of the complainant in deciding an appropriate remedy, but remedies should not lead to a complainant making a profit or gaining an advantage
- behave professionally and with regard to individual circumstances
- aim to remedy injustice or hardship in a timely way. If the complaint is about a very complex or sensitive issue, or involves more than one service provider, the complainant should be given a single point of contact
- consider all the circumstances of the case and try, wherever possible, to offer a remedy that is calculated fairly and impartially but is still appropriate.

3 Being open and accountable

Public bodies should provide clear guidance about the criteria they use for deciding remedies. Staff should know the circumstances in which they may offer remedies, and what they may and may not offer.

Criteria for deciding remedies should be clear. But they should not be applied rigidly or mechanically in a way that prevents staff and their managers considering the fairest and most appropriate remedy in all the circumstances.

Public bodies should be open and clear with complainants about what remedies may be available to them, and in what circumstances. If the internal governance of a public body means that some kinds of remedy are available only through a formal complaints procedure, it should be open and clear about that fact.

When offering a remedy, public bodies should explain to the complainant how they reached their decision. They should also keep a clear record of the decision and the reasons for it.

4 Acting fairly and proportionately

Remedies should be fair, reasonable and proportionate to the injustice or hardship suffered.

The public body should consider how the circumstances of the case have affected the complainant in all ways. Even if an offer of remedy is not legally required, the public body should consider whether it has acted fairly and how its decisions have affected:

- the complainant
- where appropriate, others who have suffered injustice or hardship as a result of the same maladministration or poor service.

When considering a remedy, it is reasonable for a public body to take into account any way in which the complainant has contributed to, or prolonged, the injustice or hardship.

Each case must be considered on its own merits. Any guidance or procedure that public bodies use to decide remedies should be flexible enough to enable the public body to consider fully:

- the individual circumstances
- the need to provide an appropriate remedy for the injustice or hardship sustained.

At the same time, people should be treated consistently. Decisions on remedies should take proper account of previous decisions made on similar facts. Any difference in remedies between similar cases should be justified by the objective features or the individual circumstances of the case.

If applying the law, regulations or procedures strictly would lead to an unfair remedy for an individual, the public body should seek to address the unfairness. In doing so, public bodies must, of course, bear in mind the proper protection of public funds and ensure they do not exceed their legal powers.

5 Putting things right

Where maladministration or poor service has led to injustice or hardship, public bodies should try to offer a remedy that returns the complainant to the position they would have been in otherwise. If that is not possible, the remedy should compensate them appropriately. Remedies should also be offered, where appropriate, to others who have suffered injustice or hardship as a result of the same maladministration or poor service.

There are no automatic or routine remedies for injustice or hardship resulting from maladministration or poor service. Remedies may be financial or non-financial.

An appropriate range of remedies will include:

- an apology, explanation, and acknowledgement of responsibility
- remedial action, which may include reviewing or changing a decision on the service given to an individual complainant; revising published material; revising procedures to prevent the same thing happening again; training or supervising staff; or any combination of these
- financial compensation for direct or indirect financial loss, loss of opportunity, inconvenience, distress, or any combination of these.

Public bodies should:

- calculate payments for financial loss by looking at how much the complainant has demonstrably lost or what extra costs they have incurred
- apply an appropriate interest rate to payments for financial loss, aimed at restoring complainants to the position they would have been in if the maladministration or poor service had not occurred
- consider what interest rate to pay and explain the reasons for the chosen rate⁴.

Factors to consider when deciding the level of financial compensation for inconvenience or distress should include:

- the impact on the individual – for example whether the events contributed to ill health, or led to prolonged or aggravated injustice or hardship
- the length of time taken to resolve a dispute or complaint
- the trouble the individual was put to in pursuing the dispute or complaint.

Remedies may need to take account of injustice or hardship that results from pursuing the complaint as well the original dispute. Financial compensation may be appropriate for:

- costs that the complainant incurred in pursuing the complaint
- any inconvenience, distress or both that resulted from poor complaint handling by the public body.

Remedial action may include improvements to the public body's complaints policy or procedures.

⁴ As a general principle, and if there is not a good reason to use another rate, we advise using the rate specified in the rules for the relevant courts for each part of the UK. Simple interest should be calculated up to the date of payment.

6 Seeking continuous improvement

Part of a remedy may be to ensure that changes are made to policies, procedures, systems, staff training or all of these, to ensure that the maladministration or poor service is not repeated. It is important to ensure that lessons learnt are put into practice.

It is a false economy and poor administrative practice to deal with complaints only as they arise and to fail to correct the cause of the problem. Learning from complaints, and offering timely and effective remedies, gives the best outcome in terms of cost effectiveness and customer service – benefiting the service provider, the complainant and the taxpayer.

The public body should ensure that the complainant receives:

- an assurance that lessons have been learnt
- an explanation of changes made to prevent maladministration or poor service being repeated.

Quality of service is an important measure of the effectiveness of public bodies. Learning from complaints is a powerful way of helping to develop the public body and increasing trust among the people who use its services. So systems should exist to:

- record, analyse and report on the outcomes of complaints and remedies
- apply the information to improving customer service.

