

Financial Redress for Injustice
Resulting from Maladministration

Special Payment Scheme:
Policy and Guiding Principles
Complaint Resolution Standards Team
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Glossary of terms

Deciding on the balance of probabilities	Determining whether it is more likely or not that an event or incident occurred.
Ex gratia	Sum of money made voluntarily, without any legal requirement to do so.
Extra regulatory	Sum of money paid over and above that covered by the regulations of a scheme (but within the scope of the scheme's broad intent).
Extra statutory	Sum of money paid over and above that covered by statute (but within the scope of the legislation's broad intent).

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Financial Redress	Money paid as part of redress. This may include sums to recompense for extra costs incurred and/or sums to recognise the impact of poor service on the customer.
Maladministration	This term is not defined, but is sometimes used to describe when our actions or inactions result in a customer experiencing a service which does not match our aims or commitments.
Redress	Remedy for a wrong or a grievance, which can include any combination of an apology, an explanation, putting things right and a financial payment.

Executive summary

This document describes, for the benefit of those considering special payments (*financial redress*), and other staff involved with customer complaints:

- the scope of, and authority for, the Department's special payment scheme for providing financial redress in response to maladministration in *customer cases*¹; and
- the underlying principles for ensuring that the financial redress provided in response to cases of maladministration reflects any resultant injustice or hardship experienced by the individual(s) concerned.

The guide should not be read as a rigid set of rules. Whilst it indicates the key principles, it cannot and does not seek to provide a blueprint for every situation. Each case must be considered on its own merits, in the light of the particular circumstances of the case. However, as the Department aims to provide similar remedies for similar injustices, the principles must be applied to every case.

¹ Special payments and losses arising in non-customer cases (such as staff and members of the public) are contained in relevant financial and personnel guides. For example, see *Losses and Special Payments to Staff and Members of the Public: a Departmental Framework*.

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1. Introduction

1.1 The Department and its agencies/businesses aim to provide its customers with a service which:

- is easy to access;
- treats them well;
- delivers on time; and
- provides them with the right results.

What is maladministration?

1.2 Unfortunately, we don't always get things right first time. The term "*maladministration*" is not defined, but is sometimes used to describe when our actions or inactions result in a customer experiencing a service which does not match our aims or commitments given. For example: wrong advice, discourtesy, mistakes and delays.

Acting to put things right

1.3 When we get things wrong, we should act quickly to put matters right, regardless of whether the customer has made a complaint. We should:

- accept responsibility;
- put things right; and

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- learn from our mistakes.

1.4 The action we take to put matters right is sometimes referred to as *redress*. Redress can include any combination of:

- a sincere and meaningful apology;
- an explanation of what happened and/or went wrong;
- putting things right (for example a change of procedure/revising published material);
- a special payment (*financial redress*).

2. Scope and Authority of the Special Payments Scheme

HM Treasury Guidance on Managing Public Money

2.1 Treasury Guidance entitled [Managing Public Money](#) provides public sector organisations with direction and guidance on the role of special payments in seeking to provide remedy for maladministration.

2.2 Parliament makes no provision for special payments when voting money, nor has it put in place legislation governing special payments. As such there is no statutory framework for making such payments. Due to their exceptional nature, special payments are made on a discretionary, 'ex gratia' or 'extra-statutory' basis. This means that deciding whether to make a payment (in any case or situation) and, if so, how much is a matter of judgement. The rationale for any such decisions must therefore be clearly documented as part of the consideration process.

Delegated authority

2.3 The Treasury has delegated responsibility to the Department for its own special payments scheme. In the event that the Department identifies the requirement for a special payment for which it has no delegated authority, or which exceeds its authority, Treasury approval must be sought in advance of any decision to pay². Additionally, the Department must **consult the Treasury** about any case, irrespective of delegations, which:

- involves important questions of principle;
- raises doubts about the effectiveness of existing systems;
- contains lessons which might be of wider interest;
- might create a precedent for other departments;
- may have repercussions beyond the individual agency/business area, or the Department as a whole;
- arises because of obscure or ambiguous instructions

² With Treasury approval it is sometimes possible to rely on the Appropriation Act to avoid an undue burden on the Parliamentary timetable. So Parliament is routinely prepared to authorise certain expenditure through the Appropriation Act alone, subject to the following conditions:

- The expenditure is no more than £1.5m in a year; or
- It is expected to last for no more than two years;

And

- Any explicit statutory limits are respected; and
- No specific legislation on the matter in question is before Parliament (see *Managing Public Money* paragraph 2.3.3 for details).

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- issued centrally;
- involves a Government Minister seeking a special payment that would not ordinarily be authorised; or
- relates to a claim for a special payment, which is the result of, or may be affected by, a period of industrial action. This will normally be limited to industrial action within the Department or its agencies/businesses.

Extra-statutory payments

2.4 Extra-statutory and extra-regulatory payments are payments which are considered to be within the broad intention of the statute or statutory regulation, but go beyond a strict interpretation of its terms. This document refers only to extra-statutory payments that may arise from Departmental maladministration, categorised here as loss of statutory entitlement (actual financial loss).

Special exercises

2.5 Sometimes extra-statutory payments are considered as part of a special exercise, for example, where:

- a systemic failure affects a number of similar cases;
- delays in administration occurred following the introduction of new legislation; or
- defective legislation does not reflect the intentions of Ministers, and this adversely affects customers.

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2.6 If consideration is being given to making an extra-statutory payment as a result of defective legislation, or in any situation other than those described above, please seek advice from Legal Group.

2.7 A special exercise should be noted in the Department's Resource Account where total losses exceed £250,000. Individual losses of more than £250,000 should be noted separately.

2.8 It is important that the Complaint Resolution Standards Team is involved in early discussions when special payments are being considered as part of an exercise.

3. Roles and responsibilities

Complaint Resolution Standards Team

3.1 The Complaint Resolution Standards Team, which forms part of the Department's Customer Insight Directorate, has responsibility for:

- the development and maintenance of the Department's special payments policy, including guidance on its application;
- ensuring that Departmental arrangements for special payments accord with Treasury policy and the Department's own guiding principles;
- liaison with policy groups, Departmental branches and other Government Departments, including Treasury, on issues relating to special payments; and
- monitoring decisions and identifying trends in overall volumes of special payments and related expenditure, including responsibility for the collation of decisions and payments made by agency/business areas.

Individual agency/business areas

3.2 The Department has delegated authority to its agencies/businesses for decision making in respect of special payments (the parameters of this delegated authority are described in the section entitled *Special Payment categories*).

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3.3 In exercising this authority agencies/businesses have a responsibility to identify any case/issue which they think may need to be raised with the Treasury in accordance with the categories detailed in the earlier section entitled *Delegated Authority (paragraph 2.3)*.

3.4 If an agency/business identifies a case/issue which they believe needs to be brought to the attention of the Treasury, they must, in the first instance, urgently refer the issue to the Complaint Resolution Standards Team **before** any decision is made, or commitment given regarding a special payment.

Special payment officers

3.5 In the absence of any legal requirement to make special payments, the decision as to whether to award a special payment rests with the Secretary of State. However, in practice the Secretary of State does not make decisions personally. Instead, officials act on the Secretary of State's behalf. These officials are referred to as ***special payment officers***.

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Decision making

3.6 In making decisions, special payment officers must consider all relevant evidence, and apply the Department's policy and guiding principles (which are covered in greater detail in section 4) to the facts of each case. Generally, each decision must be given on the facts as they exist at the date of the decision. A decision may be revised when fresh facts become known or where, for example, an impartial review concludes that a different conclusion can be reached from the same set of facts.

3.7 Special payment officers may use any type or form of evidence to inform their considerations. The weight given to each piece of evidence needs to be carefully judged in the light of the circumstances of the case. The sooner evidence of an alleged incident or event can be gathered and considered the more helpful it is likely to be in informing decision making.

3.8 It is open to special payment officers to engage the help of an expert (a person who appears to the special payment officer to have relevant knowledge or experience) in attempting to determine a particular question of fact.

3.9 Documentary or incontrovertible proof is not an essential requirement for the authorisation of a special payment. The fact that documents may have been routinely and correctly destroyed, or an officer cannot remember the case, would not in itself justify a refusal to

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make a payment. In such instances, a decision can and should be made on the balance of probabilities.

Balance of probabilities

3.10 In cases where the process of gathering evidence has been exhausted, but it remains unclear from the available evidence whether a particular event/incident occurred, or whether a particular assertion is true, it falls to the special payment officer to decide matters on the *balance of probability*. This is not the same as "beyond reasonable doubt": the standard test of proof in criminal trials.

3.11 The balance of probability involves the special payment officer deciding whether it is more likely than not that an event/incident occurred, or that an assertion is true. If the evidence is contradictory, the special payment officer should decide whether there is enough evidence in favour of one conclusion or another. They may either reach a conclusion on the balance of the probabilities, or conclude that there is insufficient evidence to allow them to make a finding one way or the other. The reason for reaching any conclusion should be clearly recorded, including the rationale for favouring one account over another.

3.12 If the special payment officer is still unable to decide the matter s/he should seek a view from a senior officer.

Dissatisfaction with a special payment decision

3.13 As special payments are not covered by statute, customers have no formal (or legislated) right of appeal against a refusal to make a special payment. However, a customer may ask the Department to look again at a rejected request, for example in the light of new evidence, or they may make representations about the level of an award. Such requests should follow the normal tiers for the escalation of complaints and be reviewed, wherever possible, by someone who was not involved in the earlier decision.

The Independent Case Examiner (ICE)

3.14 If, having exhausted the relevant agency/business complaints handling process, the customer remains dissatisfied with the redress which has been provided or offered in the form of a special payment, they can ask the ICE Office (a free and independent complaint resolution and examination service provided by DWP) to investigate their dissatisfaction.

Contact details are provided at Annex A.

The Parliamentary and Health Service Ombudsman (PHSO)

3.15 The customer may wish to ask a Member of Parliament to raise their dissatisfaction with the PHSO. The PHSO will usually consider whether the complainant has exhausted the relevant complaints resolution tiers (including the ICE Office) before deciding whether to investigate the complaint. However, the PHSO does have discretion to accept cases which have not exhausted the relevant complaint resolution tiers.

Contact details are provided at Annex A.

Special payments in cases examined by the ICE or the PHSO

3.16 In cases which have been the subject of an ICE or PHSO examination, and where the findings are not being disputed by the relevant agency/business, the special payment officer should take the outcome of the examination as the starting point for their consideration of any financial redress. No attempt should be made to re-examine the facts of the case, or reach a different conclusion on the question of whether maladministration occurred. Disputes regarding findings made by ICE or PHSO are dealt with by the relevant Parliamentary/ICE Focal Points in accordance with agreed escalation routes.

4. Guiding Principles of the Department for Work and Pensions' Special Payments Scheme

4.1 The PHSO has published her *Principles for Remedy* (Annex B). Staff must have regard to these in finding suitable solutions for the effects of maladministration. These go wider than just the issue of providing financial redress, which is the subject of this guide.

4.2 If it has been established/decided that a customer has suffered an injustice and/or hardship as a result of maladministration, the following principles should underpin all decisions made in respect of the Department's special payments scheme:

A. Individuals should not be disadvantaged as a result of maladministration:

- It is not necessary for an individual to request consideration of a special payment. The appropriateness of making a payment should be routinely considered in any attempt to rectify departmental maladministration, which may have resulted in a customer (or a third party) experiencing injustice and/or hardship.

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- The purpose of the special payments scheme is, wherever possible, to return the individual to the position they would have been in, but for the maladministration. In the event that this cannot be achieved the aim is to provide redress that is reasonable and proportionate in the light of the individual circumstances of the case.

B. Injustice and hardship resulting from maladministration should be addressed on a case by case basis:

- Each case should be considered on its own merits.
- Consideration should be given to the circumstances of the individual and the impact any maladministration has had on them (for example: the impact on an individual with a pre-existing health condition may be more severe than for someone with no health problems), and/or any other person directly involved in their case.
- Whenever possible, individuals should be given the opportunity to provide evidence (oral or written) to inform considerations in respect of financial redress.

C. Fair and justifiable decisions should be made in respect of individual cases:

- Fair and defensible decisions must be reached, and recorded, using whatever evidence is available.
- If there is no, or little, clear and confirmed evidence of maladministration, a judgement must be made on the plausibility of the allegation(s), based on all known and relevant facts (balance of probabilities).
- Decision makers should have regard to the question of whether, and to what extent, the customer's actions contributed to, or prolonged the injustice or hardship.
- Similar case facts should give rise to similar financial remedies, unless the circumstances of the case can justify an alternative remedy.

D. Special payment decisions should culminate in timely and appropriate financial redress for individuals:

- Special payment decisions should have specific regard to:
 - the length of time it has taken to resolve a complaint; and
 - the time and trouble the individual had to go to, in order to obtain appropriate redress.

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- Full consideration should be given to the most appropriate range of financial redress (a payment in respect of one category does not preclude consideration of a payment in respect of an additional, separate category).
- Individuals should receive clear, comprehensive and tailored explanations in respect of special payment decisions, incorporating details of how they can progress their dissatisfaction with any decision which has been reached.

5. Special Payment categories

5.1 There are three main special payment categories:

Interest for delay

5.2 Interest for delay may be payable in cases where delay amounted to, or resulted from, maladministration. Consideration can be given to special payments following delay:

- in the payment of benefit and/or benefit arrears; or
- in the award of qualifying benefit (linked benefit cases).

5.3 Payments of this type are calculated as if they were simple interest payments, unless the delay is greater than 10 years, in which case it will usually be calculated as compound interest. The interest rate used (with effect from December 2009) is based on the formula contained in the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998 and which is used by HMRC when making tax repayments.

5.4 However, interest payments in respect of delay will usually only be considered when the arrears of benefit are at least £100, and any compensation (calculated as if it were an interest payment) amounts to at least £10.

5.5 In cases where a customer has been forced to borrow (for example a loan, overdraft or credit card) as a

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result of maladministration, they may have incurred costs which are greater than the interest which would normally be paid to provide redress. In such cases, it may be appropriate to reimburse the actual interest paid.

Actual financial loss

5.6 Actual financial loss should be considered where maladministration has resulted in an individual incurring additional expenditure or losing entitlement to benefit (loss of statutory entitlement).

5.7 A decision has to be made on whether maladministration led to actual financial loss. Such payments are calculated by looking at how much the person has demonstrably lost or what extra costs they have reasonably incurred. The emphasis should be on trying to restore the customer to the position they would have been in had maladministration not occurred. To this end, it may be appropriate to consider adding interest to any special payment award.

Professional fees

5.8 All requests for the reimbursement of professional fees will be considered on a case by case basis and taking into account the individual features of the case.

5.9 However, customers who choose to engage professional help, for example a solicitor to assist in the progression of their complaint, should not do so on the

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assumption that such fees will be met by the Department, unless the Department has given prior approval to meet or contribute towards any costs incurred.

5.10 Given the existence of clear, structured processes and procedures for considering - and if necessary escalating - complaints of maladministration, it should not be necessary for customers to engage professional assistance in order to have their concerns addressed. Decisions concerning the reimbursement of professional fees must, in addition to the *guiding principles* detailed in section 4, have regard to the extent and reasonableness of the individual's attempts to engage with the relevant agency/business complaints resolution and escalation process.

Consolatory payments

5.11 An ex gratia consolatory payment should be considered where the customer (or a third party) has suffered injustice or hardship arising from maladministration. The customer (or third party) does not necessarily have to demonstrate that he or she suffered any financial loss and a consolatory payment should be considered regardless of whether or not any other form of financial redress has been/is to be made.

5.12 In deciding the level of payment in respect of individual cases, decision makers must have regard to the *guiding principles* detailed in section 4 of this document. To aid consideration of the impact of Departmental

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maladministration, consolatory payments are considered under three separate groupings. However, this should not prohibit consideration of other impacts which do not readily fit within these headings.

5.13 Consolatory payments usually range between £25 and £500, although higher payments may be appropriate having considered the individual circumstances of a case, in the context of the guiding principles. Where an agency or business consider consolatory payments to a customer that would, in total, exceed **£2,000** the case should be referred to the Complaint Resolution Standards Team for agreement, prior to the considerations of the special payment officer being communicated to the customer (or third party). The following additional rules apply:

- **Gross inconvenience:** that is, the time, trouble, difficulty or discomfort (including stress short of significant injury to health) experienced by the customer (or third party) as a direct result of maladministration. Any proposals to pay in excess of **£500** must be referred to the Complaint Resolution Standards Team for consideration/agreement before the decision is communicated to the customer (or third party).
- **Gross embarrassment, humiliation or unnecessary personal intrusion:** experienced by the customer (or a third party) as a result of maladministration. Any proposal to pay in excess of **£750** must be referred to the Complaint Resolution Standards Team for consideration/agreement, before the decision is communicated to the customer (or third party).

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- **Significant impact on physical or mental health (referred to as severe distress):** experienced by a customer (or a third party) as a result of maladministration. Any proposal to pay in excess of **£2,000** must be referred to the Complaint Resolution Standards Team for consideration/agreement, before the decision is communicated to the customer (or third party).

5.14 More detailed guidance for staff with responsibility for considering special payments can be found in “*Financial Redress for Injustice Resulting from Maladministration: A Guide for Special Payment Officers*”.

ANNEX A

The Independent Case Examiner

In writing: The Independent Case Examiner
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Chester
CH99 9SA

Telephone: Telephone number (local call rate): 0845 606
0777

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151 801 8800.

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E-mail: ice@dwp.gsi.gov.uk

The Parliamentary and Health Service Ombudsman

In writing: The Parliamentary and Health Service
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Millbank Tower
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Fax: 0300 061 4000

Website: phso.enquiries@ombudsman.org.uk

E-mail: phso.enquiries@ombudsman.org.uk

ANNEX B

The Ombudsman's Principles for Remedy

Good practice on 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.

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- 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.

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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.

