

Financial Redress for Maladministration

Special Payment Scheme: Policy and Guiding Principles

April 2012

This guide replaces all previous versions and applies to all special payment decisions made on or after 1 April 2012

ISBN: 978-1-84947-532-7

DWP Department for
Work and Pensions

Glossary of terms

Deciding on the balance of probabilities	Determining whether it is more likely or not that an alleged event or incident occurred.
Ex gratia payments	Sum of money paid voluntarily, without any legal requirement to do so.
Extra-statutory payments	Sum of money paid over and above that covered by statute (but within the scope of the legislation's broad intent)
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	The term used to describe when government 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

- the scope of, and authority for, the Department's special payment scheme¹; and
- the underlying principles for ensuring that financial redress is used correctly.

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.

It 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.

More detailed advice and guidance on the actual processes for considering and making a special payment can be found in “**Financial Redress for Maladministration: A guide for special payment officers**”.

This guide aims to ensure that any payments made from public funds in the form of financial redress are reasonable and proportionate.

Author

Complaints Policy Team

Customer Experience Directorate

1. Introduction

1.1. The Department and its operational 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 the commitments we have given. It applies to situations in which we have not acted properly or provided a poor service. 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
- 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.

1.5. Most cases will be put right by providing an apology, an explanation of what happened and where appropriate, a description of any steps being taken to try and avoid similar problems arising in the future.

2. Scope and Authority of the Special Payment 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' 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 pay. Additionally, the Department must **consult the Treasury** about any case, irrespective of delegations, which

- is novel or contentious
- 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 Department's individual business areas, or the Department as a whole
- arises because of obscure or ambiguous instructions issued centrally
- involves a government minister seeking a special payment that would not ordinarily be authorised
- 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 businesses.

Extra-statutory payments

2.4. Extra-statutory payments are payments which are considered to be within the broad intention of a law (a statute or statutory instrument) but go beyond a strict

interpretation of its terms. This document only applies to extra-statutory payments arising from Departmental maladministration.

Defective legislation

2.5. This guidance does not cover extra-statutory payments which may be necessary to address the fact that the current legislation does not provide for payments as intended by ministers/Parliament. It is for the relevant policy and operational teams to determine, in discussion with Legal Group, whether extra-statutory payments should be made pending legislative changes and obtain the necessary authority from HM Treasury to make such payments.

3. Roles and Responsibilities

Complaints Policy Team

3.1. The Complaints Policy Team which is part of the Department's Customer Experience 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,
- monitoring decisions and identifying trends in overall volumes of special payments and related expenditure, including responsibility for overseeing decisions and payments made by the operational business areas.

Individual operational business areas

3.2. The Department has delegated authority to its operational businesses for decision making in respect of special payments. The details of these delegated limits are described in "**Financial Redress for Maladministration: A guide for special payment officers**".

3.3. In exercising this authority, the operational 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 operational 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 Complaints Policy 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.

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 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. Where there is insufficient evidence to allow a decision maker to make an informed decision about whether to award a special payment, 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 probabilities**. This is not the same as "beyond reasonable doubt": the standard test of proof in criminal trials.

3.11. The balance of probabilities involves the special payment officer deciding whether it is more likely than not that an alleged 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. The process must culminate in a final decision, on the balance of probabilities, as to whether the alleged maladministration occurred.

Dissatisfaction with a special payment decision

3.13. As special payments are not covered by statute, customers have no 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 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 examine their complaint. 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 escalate their complaint to the PHSO. The PHSO will usually consider whether the complainant has exhausted the relevant complaints resolution process (including the ICE Office) before deciding whether to investigate the complaint. However, PHSO does have discretion to accept cases which have not exhausted the relevant complaint resolution process. Contact details are provided at Annex A.

Special payments in cases examined by ICE or 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 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 PHSO/ICE Liaison Team in accordance with agreed escalation routes.

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

4.1. The PHSO has published **Principles for Remedy** (Annex B) to help public bodies decide fair, reasonable, and proportionate remedies for the effects of maladministration. The Department has had regard to these wider Principles in drawing up the Guiding Principles which are specific to the DWP's Special Payment Scheme.

4.2. If it has been established/accepted that DWP maladministration occurred, the following DWP principles should underpin all decisions made in respect of the Department's Special Payment Scheme

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.
- The purpose of the Special Payment Scheme is, wherever possible, to return the individual to the position they would have been in but for the maladministration. If this cannot be achieved the aim is to provide redress that

is reasonable and proportionate in light of the individual circumstances of the case².

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).
- The individual who experienced the maladministration should be given the opportunity to provide evidence (oral or written) to inform the special payment decision making process.

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

- Fair and defensible decisions must be reached, using whatever evidence is available, and must be properly recorded.
- Special payment officers 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.

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

- Full and timely 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).
- 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.
- Individuals should receive clearly written, comprehensive and tailored explanations in respect of special payment decisions, incorporating details of the action they can take if they are unhappy with the decision which has been reached.

5. Ex gratia special payment categories

5.1 There are three special payment categories under which individuals can be awarded financial redress in response to DWP maladministration.

² In Managing Public Money: Annex 4.14, Paragraph A4.14.9 HM Treasury has advised that 'Where financial redress is identified as appropriate redress, it should be fair, reasonable, and proportionate to the damage suffered by those complaining. Financial remedies should not, however, allow recipients to gain a financial advantage compared to what would have happened with no service failure'.

Category 1: Loss of statutory entitlement

5.2 A special payment for loss of statutory entitlement can be made if maladministration has caused a claimant to lose entitlement to statutory benefit payments.

Category 2: Actual financial loss or costs

5.3 A special payment may be considered under this category if an individual has incurred additional costs or losses as a direct result of maladministration.

5.4 Such payments are calculated by looking at how much the person has demonstrably lost (evidence is usually required) or what extra costs they have reasonably incurred³. The emphasis should be on trying to restore the individual to the position they would have been in had maladministration not occurred.

5.5 In seeking to restore an individual to the position they would have been in had no maladministration occurred, it may be appropriate for a special payment to include an additional element to recognise the significant delay in paying benefit and the erosion in the monetary value of the arrears, due to the passage of time. Such a payment is **not** in lieu of interest, but for reasons of consistency, the special payment is calculated using HM Revenue and Customs' simple tax repayment rate, as a consistent benchmark. This practice aligns with HM Treasury's recommendation in their guidance on Managing Public Money⁴.

Professional fees

5.6 Requests for the reimbursement of professional fees will be considered on a case by case basis, taking into account the individual features of the case.

5.7 However, the existence of clear, structured processes and procedures for considering and if necessary, escalating complaints of maladministration, should make it unnecessary for customers to engage professional assistance in order to have their concerns addressed in a full and timely manner. Customers that choose to engage professional help, for example a solicitor or accountant to assist in the progression of their complaint, should not expect that the fees will be met by the Department.

5.8 As a general rule, professional fees will only be reimbursed if the individual can demonstrate that

- all reasonable attempts were made to engage with the complaint resolution process prior to engaging professional assistance
- the issue would not have been resolved, within a reasonable timescale, had the individual not sought professional assistance; and

³ Managing Public Money Annex 4.14 Box A provides a list of factors that can be considered when deciding financial compensation. However, this list is not exhaustive.

⁴ HMT suggests, in its guide to government accounting: Managing Public Money Annex 4.14 paragraph A4.14.10, Departments should consider using the rate which Her Majesty's Revenue and Customs (HMRC) pays on tax repayments and the rate used in court settlements to calculate any payments that are made for delay.

- the fees incurred are reasonable.

Category 3: Consolatory payments

5.9 A special payment may be considered under this category where the customer (or a third party) has suffered injustice or hardship arising from maladministration.

5.10 In deciding whether to award a consolatory payment and if so, how much, the special payment officer must have regard to the **guiding principles** detailed in section 4 of this document.

5.11 Consolatory payments usually range between £50 and £500, although lower or higher payments may be appropriate having considered the individual circumstances of a case, in the context of the guiding principles.

5.12 More detailed guidance for staff with responsibility for considering special payments can be found in “**Financial Redress for Maladministration: A guide for special payment officers**”.

Annex A

Independent Case Examiner

In writing

The Independent Case Examiner
PO Box 209
Bootle
L20 7WA

Telephone 0800 414 8529

NGT Text Relay 18000 0800 414 8529

If you are calling from outside the UK: +44 151 221 6500.

Website Independent Case Examiner - GOV.UK

E-mail ice@dwp.gov.uk

Parliamentary and Health Service Ombudsman

In writing

The Parliamentary and Health Service Ombudsman
Citygate
Mosley Street
Manchester
M2 3HQ

Telephone Complaints Helpline 0345 015 4033

Website www.ombudsman.org.uk

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

Annex B

PHSO'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.
- 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. PHSO will adopt a similar approach in recommending remedies.