



UK Visas
& Immigration

Ex-Gratia Payments Financial Redress Guidance

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Ex-Gratia guidance

1.1 Introduction

Description

1.1.1 An 'ex-gratia payment is a sum of money paid when there is no obligation or liability to pay it. ('Compensation' payments must be awarded by a court). Immigration Enforcement, UK Visas & Immigration and Border Force make ex-gratia payments to customers, beyond any legal or statutory requirements, as redress for maladministration. These payments are made at the discretion of the Home Office and depend on the individual circumstances of each complaint.

Time limits

1.1.2 **It is reasonable to expect that customers will make a claim for an ex-gratia payment within three months of a complaint being resolved or an issue taking place and certainly within six years of the events giving rise to the claim.** This time limit will start running from the date the customer has knowledge (or reasonably should be expected to have knowledge) of the events giving rise to the claim. Claims made outside of this time limit will be considered on a case by case basis having regard to any representations made by the customer to explain the reason for the delay over and above the usual six year limit.

Responsibilities

1.1.3 The Central Correspondence Team (CCT) and Border Force Complaints and Correspondence team (BFCC) are responsible for assessing claims for ex gratia payments and authorising payment where appropriate. Claims can be made by the customer directly, through representatives or by the Parliamentary and Health Service Ombudsman (PHSO). Each claim is judged on the merits of the evidence provided by the person making the claim and the internal records and guidance available to the person asked to investigate the claim.

The business area responsible for the maladministration is responsible for the payment from their budget, although the handling of the process to enable the claim to be made is usually delegated to the CCT Ex-gratia team or Border Force Complaints and Correspondence team.

Delegated Authority

1.1.4 All ex-gratia payments need to be considered in line with HMT's guidance on [managing public money](#) (July 2013). If there are concerns that part or all of a claim for an ex-gratia payment may be fraudulent please refer to section [1.8](#) of this guidance.

Specific written approval from the Treasury must be received for all proposals to make an ex gratia payment above £50,000. With claims under this amount authority has been delegated as follows:

| | |
|---------------------------------------|----------------|
| Home Office senior directors: | £1-£50,000 |
| Grade 5 / Directors | £1-£20,000 |
| Grade 6 | £5,000-£19,999 |
| Head of Unit (G7)/ Responder Hub (G7) | £1-£4,999 |

Named International Approver (HEO) £1-£4,999

Staff in CCT or BFCC should ensure that they have the right level of financial approval to allow them to approve payments from the UK Visas & Immigration or Immigration Enforcement business budgets when claims are assessed as substantiated or partially substantiated. Each should hold a letter of authority from the budget holder which lists the cost centre codes from which payment may be made. This should be reviewed annually with the business to ensure that everyone is clear about the responsibilities and that agreed payments can be made quickly.

Disputes over the amount or which business unit is responsible for meeting the costs should be resolved by the relevant G7 business unit heads. If agreement cannot be reached then the G7 business head responsible for CCT will make the final decision.

Collective claims

1.1.5 This guidance is intended to apply to the consideration of individual claims for financial redress as a result of the maladministration of their case. In some cases there may be many individuals who claim to have been affected by maladministration under the same circumstances, e.g. due to a decision to administer certain applications in a particular way. In such cases the potential cumulative cost of ex-gratia payments could exceed £50,000 - sometimes substantially. In such cases, **which fall outside the scope of this guidance**, legal advice should be obtained from Home Office Legal Advisers (HOLA) about the legal liabilities. Authorisation for payments which in total, but not individually, exceed £50,000 should be signed off by the UK Visas & Immigration Director General, Immigration Enforcement Director General or Border Force Director General.

Although the CCT ex-gratia team or BFCC unit will assess the amount to be paid, and will complete the paperwork to ensure the payment is made quickly, the payments will be made from the budgets of the business area which was responsible for the maladministration.

When the Home Office decides an ex-gratia payment should be paid, a letter informing the customer of the amount should be sent to them asking them to formally accept the offer. (NB: The letter must not refer to the offer being in “full and final settlement” as this is misleading and, in any case, not binding). Once the customer accepts the offer, the amount offered should be paid within a reasonable time.

Record keeping in reimbursement cases

1.1.6 All complaints that are made to the formal postal and email addresses as shown on the UK Visas & Immigration complaints procedure pages of the government website (www.gov.uk/government/organisations/uk-visas-and-immigration/about/complaints-procedure) and that meet the definition of a complaint made shown in section 2 of the Complaints Management Guidance (CMG) must be recorded on the Complaints Management System (CMS).

Complaints that also claim financial redress which have been received by the Customer Correspondence Hub (CCH), either through the Complaints email or postal address, will have their complaint registered on CMS as usual but indicating that a request for redress has been made.

Staff in the CCT Complaints team should investigate the complaint, drawing together any Home Office information available. They should then send a letter apologising to the

customer if maladministration has occurred and ask the customer to submit an ex-gratia claim if they wish along with any evidence to support their claim. This letter will close action on the complaint. When the ex gratia claim has been received with the supporting evidence this should be logged as a new ex-gratia claim on CMS.

Service standards

1.1.7 There are no formal service standards for the consideration of an ex-gratia claim, however we aim to consider claims within the following perimeters:

Straightforward claims such as: biometrics enrolment fee reimbursement; appeal fees where UK Visas & Immigration withdraws the appeal prior to hearing; some lost document cases and some voluntary departure failure cases. We aim to consider these types of claim within 20 working days of the date the claim is received by the Customer Correspondence Hub for logging on to CMS.

Complex claims: all other claims not detailed above, reconsiderations and more complex lost document and voluntary departure claims. We aim to deal with these claims within 12 weeks of the date they are received by the ex-gratia team where the claim contains all supporting evidence required to commence consideration in order to make a substantive decision on the claim.

If the claim is considered as complex, an acknowledgement letter should be issued to advise the customer of the date we aim to make a decision on the claim by.

Ex-gratia cases are considered completed in the following circumstances:

- When a decision letter offering redress has been made and 10 working days have passed with no response.
- When a decision letter has been sent refusing financial redress and no request for review has been received within one calendar month of the decision letter.
- Where payment has been offered and accepted the date the payment was made into the bank account of the complainant by BACS transfer.

Payments

1.1.8 If an offer is made it will also contain a template for the customer to confirm acceptance of the payment and provision of their bank details to enable a BACS payment to be set up and made. We do not have provision to make payment directly to a customer's bank card. Payment will usually be made within 28 days of submission of the form to the correct email address detailed on the offer letter, unless we need to clarify currency or account information.

The bank details provided should be in the name of the **customer named on the payment template** unless this is a child under 18 years old or the payment is an application fee for a recently deceased customer.

If a customer requests their funds be paid into a third party account, such as husband, wife, friend etc then there is space on the template for them to sign their agreement and name the requested alternate payee.

Payment can be made to an overseas bank account, however customers may be charged a fee by their bank for converting that payment into local currency. This is not a cost that will be reimbursed by UK Visas & Immigration.

Whilst we always try to accommodate customer's requests for payments to overseas accounts in local currency, at times this may not be possible due to bank restrictions. If we encounter any issue with payment, the ex-gratia assessor will let the customer know and they may be requested to provide alternative details, this will also cause a delay in the payment.

Review process

1.1.9 If a customer is dissatisfied with how the department has dealt with their ex gratia claim, there are processes for reviewing this internally and in some cases externally as well. The right to a review should be explained in any written response to the ex-gratia claim.

Review timescales

1.1.10 A customer has up to one month from the substantive reply to make a request for a review of the ex-gratia decision. Reviewers may use their discretion if there appear to be exceptional circumstances to review a reply which is sent after 1 month, although there is no obligation to take on these cases

PHSO

1.1.11 If the customer remains unhappy following the review they can ask their MP to raise their complaint about the ex-gratia decision made with the Parliamentary and Health Service Ombudsman (PHSO).

1.2 Principles for consideration of ex-gratia payments

1.2.1 Parliament makes no provision in legislation concerning ex-gratia payments. As there is no statutory framework, 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.**

1.2.2 The ex gratia team should consider whether the customer has suffered actual financial loss or non-financial loss that is sufficiently compelling to warrant financial redress:

- Where maladministration has been identified by the department an ex-gratia payment will be considered.
- Generally, each decision must be made 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.

1.2.3 Consider the type or form of evidence. The weight given to each piece of evidence needs to be carefully judged in the light of the circumstances of the case. The sooner the evidence of an alleged incident or event can be gathered and considered, the more helpful it is likely to be in informing decision making.

However, documentary or incontrovertible proof **is not** an essential requirement for the authorisation of an ex-gratia payment so 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 make a payment. In such instances, a decision can and should be made on the balance of probabilities.

Balance of probabilities

1.2.4 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, decision makers should decide the case on the balance of probabilities. This is not the same as "beyond reasonable doubt": the standard test of proof in criminal trials.

1.2.5 The balance of probabilities involves deciding whether it is more likely than not that an event/incident occurred, or that an assertion is true.

If the evidence is contradictory it should be decided whether there is enough evidence in favour of one conclusion or another.

This may either mean a conclusion on the balance of probabilities or a conclusion that there is insufficient evidence to substantiate a complaint. The reason for reaching any conclusion should be clearly recorded, including the rationale for favouring one account over another.

1.2.6 If the HEO ex-gratia manager is still unable to decide the matter they should seek a view from their SEO or G7 manager.

1.2.7 The ex-gratia team will consider the appropriate level of any ex gratia payment and ensure it is authorised, offered and paid according to their relevant local procedures and always in accordance with the guidance in 1.1.4 concerning levels of delegated authority.

1.3 Maladministration

Definition

1.3.1 There is no definition of maladministration in law but it is generally agreed to be a lack of care, judgement or honesty in the management of something. If a reasonable decision is made on an application (given the case law and/or Home Office guidance at the time) which is subsequently held not to be sustainable, maladministration will not have been found. This is because the original decision is considered to have been made using due care, judgement and honesty.

Examples

1.3.2 The following are normally considered to be maladministration and may be considered for ex gratia payments. This list is not exhaustive and each case should always be assessed on its own merits.

| | |
|--|---|
| 1.3.3 Losing documents | These can include the loss of documents such as passports, driving licences, marriage certificates, birth certificates, college certificates etc. that have been submitted by customers and have been lost or misplaced whilst in our care. |
| 1.3.4 Incorrectly addressed correspondence. | If the envelope used to return documents is incorrectly addressed and this causes the loss of documents by a third party, |

| | |
|---|---|
| | e.g. Royal Mail, the Home Office business area responsible for sending it out would be liable for that loss. |
| 1.3.5 Defacing/invalidating documents | Examples may include punching a national passport which invalidates it, or marking/defacing a document which leads to it being invalidated. |
| 1.3.6 Taking incorrect action | An example of failing to take correct action could be endorsing a passport with the wrong conditions, resulting in a person being unable to take up a work placement. |
| 1.3.7 Failure to respond to correspondence | An example of failing to respond to correspondence can be where a customer has written to a business area in Immigration Enforcement, UK Visas & Immigration or Border Force on a number of occasions (or over a period of time) regarding action that they needed us to take, such as returning a passport/confirmation of right to work, which has then led to the customer incurring financial cost. |
| | Correspondence examples can also be considered under non-financial loss where staff have not responded to correspondence which could cause the customer anxiety and inconvenience (see section 12.5 on non-financial loss for further guidance). |
| 1.3.8 Giving incorrect advice | An example of giving incorrect advice would be the customer making an application too early or submitting an incorrect application based on incorrect advice, particularly if it incurs a charge. |

The department DOES NOT class as maladministration

Delays

1.3.9 Targets, other than mandatory ones, are taken as indicators of a satisfactory or unsatisfactory performance rather than a firm commitment that a specific performance will be achieved in every individual case. Delays that have occurred due to operational constraints and limited resources, i.e. where a backlog of cases have occurred, are not classed as maladministration by Immigration Enforcement, Border Force or UK Visas & Immigration directorates.

Forms of redress

1.3.10 Forms of redress such as an apology or remedial action may be called for when the complaint is about delay. Financial redress would only be appropriate in **exceptional**

circumstances where the delay has also had a financial impact. Examples can include failure to take action on repeated requests from applicants regarding the return of a passport which then leads to financial loss, or a decision being made on an application and failing to serve that decision which then leads to financial losses, such as loss of access to benefits or being unable to take up a proven offer of employment or employment being terminated. Whether a delay should be considered as “reasonable” will be dependent on the circumstances and decision makers will take a case by case approach.

Policy changes/Cases put on hold

1.3.11 Where further action on cases has been temporarily suspended whilst awaiting a court judgment that is relevant to the appropriate administration of those cases, and/or where new policies are being developed to reflect a relevant court judgment, it is not maladministration.

1.4 Exceptional Circumstances

1.4.1 There may be circumstances when no maladministration has occurred but there has been a situation which has led to a customer incurring expenses that they would not otherwise have incurred. For example:

- Flooding of a valuable document hold which resulted in a large number of passports and other documents being water damaged.
- Computer systems have gone down over a number of days and customers who have attended one of the Contact Centres have incurred additional expenses to make or travel to a subsequent appointment.

Immigration Enforcement, UK Visas & Immigration and Border Force would not accept liability in these cases, as there was no maladministration. Decision makers may offer redress exceptionally to customers whose documents were affected or who incurred travel costs due to making further appointments.

1.4.2 The ex-gratia team will consider the appropriate level of any ex-gratia payment and ensure it is authorised, offered and paid according to their relevant local procedures and always in accordance with the guidance concerning levels of delegated authority.

1.5 Actual financial loss

Description

1.5.1 Actual financial loss applies to cases where maladministration has directly caused the customer to incur additional expenditure that would not have been incurred otherwise.

Categories

1.5.2 Most cases are likely to fall into three broad categories:

- where the customer has lost in whole or in part an entitlement to a government grant, subsidy, benefit payment, allowance or other payment;
- where the customer has been put to additional expense; and/or
- where payment of a grant or benefit etc. has been delayed and a payment has been sought on account of the delay.

Currency conversion

1.5.3 Immigration Enforcement, UK Visas & Immigration and Border Force make **ex-gratia payments for financial loss for reasonable costs that have been necessarily incurred. The aim is to restore the customer to the position he or she would have enjoyed had the maladministration not occurred.** Where claims are made for costs occurred in foreign currencies the exchange rate at the time of expenditure should be used to determine the appropriate level of payment. A history record of currency exchange rates can be found at www.oanda.com/currency/converter/

From 1 January 2019 all currency conversions should use the Home Office Exchange Rate Policy rates relevant to the 14 day period in which the costs were incurred.

www.gov.uk/government/publications/exchange-rate-policy

Financial advantage

1.5.4 Financial remedies should not, however, allow recipients to gain a financial advantage compared to what would have happened with no service failure.

Interest payments

1.5.5 Immigration Enforcement, UK Visas & Immigration and Border Force do not pay interest on ex-gratia payment claims. Interest is only considered on payments where it has been recommended by the PHSO at the rate paid by the county courts. At the present time that is 8%.

Examples

1.5.6 The following are typical examples of financial loss. These are not exhaustive and are used to demonstrate general principles in deciding the appropriate levels of redress for financial loss.

Passports

1.5.7 The majority of claims for reimbursement that are received concern lost or misplaced passports. The cost of a passport can vary from less than £50 to over £800 depending on the issuing country.

Other costs

1.5.8 In addition to payments for replacing a lost passport, customers will often seek redress for:

- Travel costs to their Embassy or High Commission in order to obtain a new document (this may include rail, road and sometimes air fares);
- Passport photographs;
- Signed affidavits (confirming their identity);
- Loss of earnings (on the grounds that they had to visit their Embassy or High Commission when they could have been at work).

Evidence

1.5.9 If the immigration businesses accept that a passport has been lost whilst in its care, the decision maker should consider all costs associated with replacing it. Customers are required to supply evidence to support their claim in this respect. This includes:

- Receipt for the cost of the passport from the Embassy or High Commission;

- Proof that travel to the home country was required and the replacement passport or other document could not have been obtained by post from the UK;
- Proof of travel costs (train, coach and airline tickets and receipts for petrol costs);
- Receipts from solicitors in respect of affidavits;
- Receipts for passport photographs if they are available.

Bio-data pages

1.5.10 If a customer is unable to provide a receipt for the cost of a passport, a photocopy of the bio-data pages of the new passport showing the identity details and date of issue should be requested.

Checks

1.5.11 When the evidence has been received, the Ex-gratia team should check the cost of the passport with the relevant Embassy or High Commission. This can be done via the websites of the various Embassies. High Commissions can be contacted for this information via email, fax, letter or telephone. Contact details for the various Embassies and High Commissions can be found at the [Foreign and Commonwealth](#) website.

Expiry dates

1.5.12 The decision maker in ex-gratia cases should always check the expiry date of a passport that has been lost or misplaced. In general, if a passport expires whilst the Immigration Enforcement, UK Visas & Immigration or Border Force is holding it in connection with an application, the applicant is responsible for its renewal.

Some Embassies and High Commissions charge the same amount to renew a passport as they do to replace one. If a passport that has expired is lost, and the renewal fee is the same as the replacement fee, an ex-gratia payment should not be offered. If the replacement fee is higher than the renewal fee, the difference between the two fees should be paid.

Travel documents

1.5.13 In some cases, e.g. some asylum applications where the nationality and circumstances are known and not in dispute, it may be more appropriate to provide the customer with travel documents and an ex-gratia payment or, in rare cases, a new UK passport and payment of the cost of the naturalisation process, rather than to replace their foreign passport. Customers should not assume that they can automatically replace a lost foreign passport with a UK passport. Each case will be considered on its merits.

Travel costs

1.5.14 In most cases customers will provide evidence of travel costs such as receipts or the actual travel tickets. If a customer is unable to provide proof of travel costs but there is evidence that they visited their Embassy or High Commission, the Responder Hub should consider offering an ex-gratia payment.

Train costs

1.5.15 Enquiries about the cost of train fares should be made by contacting National Rail on 03457 484950 or through [National Rail Enquiries](#).

Petrol costs

1.5.16 Some customers choose to travel by car and submit receipts for their petrol costs. However, the decision maker in ex-gratia cases should only pay for the petrol needed to

make the essential journeys in relation to the maladministration, e.g. replacing their passport. This can be difficult to establish accurately but the calculation below provides one way to achieve a reasonably accurate estimate.

Mileage calculator

1.5.17 The decision maker in ex-gratia cases should work out **how many miles** the customer has had to cover. This can be done by using the [AA Route Planner](#). The decision maker should then follow these steps:

- **Divide the journey length in miles by 30** (i.e. to give an assumed fuel consumption rate of 30 miles per gallon).
- **Multiply by 4.55** to establish the number of litres of fuel required (there are 4.55 litres to the gallon).
- **Multiply by the most appropriate price per litre of fuel** as obtained from <http://petrolprices.com>.

Taxis

1.5.18 Some customers may claim the cost of travelling by taxi. In general, the business will not meet the cost of taxi fares. However, the Responder Hub should consider these costs in exceptional circumstances. For example:

- where the customer is disabled;
- where the customer is heavily pregnant or ill; or
- where there was no public transport alternative at the time the customer needed to travel.

Evidence of this must be provided, including appropriate medical evidence.

Accommodation costs

1.5.19 Hotel costs will only be reimbursed where it is considered reasonable to incur such costs. If options for day return travel exist, the decision maker will always consider these as a viable alternative to hotel accommodation.

Accommodation abroad

1.5.20 Decision makers should consider whether documents can only be replaced if customers travel to the country in person and should consider evidence from the embassies or educational establishment as to whether reasonable alternatives exist.

Customers who approach decision makers for advice prior to travelling abroad, where the decision maker has agreed there is no alternative, may submit evidence of likely costs prior to booking to ensure there are fewer disagreements over what is considered reasonable. They should be informed that this does not commit the decision maker and all cases involving financial cost will be considered on a case by case basis and on the basis of the expenses incurred. For example, if travel is taken later than the estimate and resulting expenses are lower than estimated the decision maker will not refund costs on the basis of the estimate, but on the basis of the expenses incurred. If costs are significantly higher, however, the decision maker will consider what would be reasonable based on the paragraph below.

Checks

1.5.21 Customers who claim hotel costs should be aware that decision makers will look at three quotes for budget hotels and consider the average current rate for the country/city or the Home Office capped rate, whichever is lower at the time of travel. Decision makers will also consider whether the length of stay and other factors are appropriate on a case by case basis. Unless there are exceptional events, it is reasonable to expect return to the UK within two days of the date of the issue of the documents which have been replaced.

Costs cannot be reimbursed if they have not been incurred.

Other valuable documents

1.5.22 Immigration Enforcement, UK Visas & Immigration and Border Force will consider offering an ex-gratia payment to replace other lost or misplaced documents. This includes:

- Marriage certificates;
- Birth certificates;
- Police Registration certificates;
- Exam certificates i.e. diplomas, degrees etc.

Receipts

1.5.23 The Responder Hub must request receipts before offering an ex-gratia payment to cover the costs of replacing these documents. If the customer cannot provide receipts, the Responder Hub should request copies of the documents which will confirm their date of issue and information about where they were obtained from. If necessary, the Responder Hub can then contact the provider to confirm authenticity.

Losses by Royal Mail

1.5.24 Immigration Enforcement, UK Visas & Immigration and Border Force despatch documents by Recorded Delivery or Secure Mail System (SMS) unless applicants provide a pre-paid self-addressed Special Delivery envelope.

Correspondence incorrectly addressed

1.5.25 The Home Office decision maker will only consider offering an ex-gratia payment if correspondence was incorrectly addressed and was either subsequently lost by Royal Mail or delivered to the incorrect address by Royal Mail and subsequently became lost. If the package was correctly addressed, the ex-gratia team should not offer payment.

Royal Mail compensation

1.5.26 Royal Mail will usually reimburse applicants for a lost package even if it has been addressed incorrectly. However, it will not offer any more than the equivalent of the current cost of a first class stamp. In these cases, as there has been maladministration, the excess above the cost of the first class stamp should be paid. Where a passport hotline or business area takes longer than the Royal Mail limit for making a claim, then the department should seek to redress the customer as they have not been able to submit a claim to Royal Mail in time.

Case study 1

We despatch Mr X's status papers and his family's passports by recorded delivery to the address recorded on the Case Information Database (CID). Mr X enquires about his application and is informed that the decision letters and documents have been despatched and that he should check with Royal Mail.

Mr X establishes that the package had not arrived. The Responder Hub discovers that the package was incorrectly addressed. Mr X had informed us of a recent change of address but this had not been recorded on CID. Royal Mail subsequently sends Mr X a first class stamp as a good will gesture: £0.60.

The total cost of the passports was £336 plus a further £16 for passport photographs.

Pay the difference between the total cost and the £0.60 offered by Royal Mail (£352 - £0.60).

Mr X should be offered £351.40.

Case study 2

Miss Y's status papers and passport are despatched by recorded delivery to the address recorded on the CID. Miss Y enquires about her application and is informed that the decision letter and her documents have been despatched and that she should check with Royal Mail.

Miss Y establishes that the package has not arrived. We issue evidence of the address used and recorded delivery details, along with proof of Royal Mail collecting the package. Miss Y makes a claim to Royal Mail which subsequently offered a payment of £46.

Unfortunately the £46 offered by Royal Mail does not cover her costs and she puts in a subsequent claim to us claiming that we should be using Special Delivery to despatch valuable documents.

The total cost of replacing her passport comes to £263.

As there has been no maladministration on our part, in that we correctly addressed the package and sent it by recorded delivery because no Special Delivery pre-paid envelope was provided, the Responder Hub should refuse this claim.

Missed travel or holiday

1.5.27 Immigration Enforcement, UK Visas & Immigration and Border Force advise all applicants that they should not make any non-urgent travel plans whilst their applications are being considered. This information is published on our website for both in and out of country applications. Applicants who are exercising their rights under the European Economic Area (EEA) Regulations may have their documents returned to them while an application is pending enabling them to travel abroad. Applicants also have the option to withdraw their applications if they need to travel urgently.

Missed essential journeys

1.5.28 Applicants who have not been able to make an essential journey abroad because their documents have been lost should be offered payment by Immigration Enforcement, UK Visas and Immigration or Border Force staff. This includes situations where we failed to return them in time and where reasonable notice has been given.

Evidence required

1.5.29 The following information is of use in assessing a claim for missed travel or holiday:

- Unused flight tickets.
- Confirmation of cost of holiday or flight from travel agents or airline.
- Confirmation that no refund was given by the travel agent or airline.
- Confirmation that the holiday or flight was non-transferable or non-refundable. The airline or travel agent can provide this information.

Loss of earnings

1.5.30 Some applicants may claim for loss of earnings where they have had to take a day (or a number of days) off work to visit their Embassy or High Commission, or to travel to one of the Contact Centres, or because their employment has been lost or suspended, due to maladministration by Immigration Enforcement, UK Visas & Immigration or Border Force.

Evidence required

1.5.31 Customers must supply evidence to support their claim of loss of earnings. This includes, but is not exclusive to:

- Original wage slips, or certified copies, covering the period of loss;
- Letter from employer confirming time off and loss of earnings (net);
- Copy of contract providing details of wages.

Gross and Net salary

1.5.32 When considering refunding loss of earnings, evidence provided by the customer should be carefully considered so that the gross and net salary payments are properly understood. Wage slips from some employers deduct tax at source; others do not. In making any payment based on wage slip evidence or consultancy contracts, or for the self employed, care should be taken to ensure that the tax position is understood. Reimbursements will be made on net and not gross earnings.

Self employed

1.5.33 Anyone requesting redress for loss of earnings who are self-employed should be asked for evidence to prove the basis of their loss of earnings. This may possibly include a tax return/letter from HMRC. However, Responder Hubs should advise claimants that any payment made is based on net pay and that any evidence the claimants have submitted should include their tax banding.

www.gov.uk/government/publications/rates-and-allowances-income-tax

Annual leave

1.5.34 Where holiday or annual leave has been taken, perhaps to visit an embassy or premises after lawful entry, confirmation should be sought as to what basis leave is accrued, and reimbursement should be provided on that basis.

Potential loss of earnings

1.5.35 Payments on the grounds of maladministration for potential loss of earnings where employment had not commenced are not generally made. However, where a customer claims exceptional circumstances, these will be considered on a case by case basis.

Examples

1.5.35 Payments on the grounds of maladministration for potential loss of earnings where employment had not commenced are not generally made. However, where a customer claims exceptional circumstances, these will be considered on a case by case basis.

1.5.36 If a claimant has only provided evidence of gross pay, the following calculation can be used to assess the net loss:

Basic tax rate payer 2018-2019

- Annual gross pay (up to) £46,350 minus £11,850 (personal tax allowance) multiplied by 0.68 (to account for 20% tax and 12% National Insurance), add back £11,850 = Annual Net Pay.
- Divide by 52 for weekly net salary and then again by the amount of days normally worked each week for the daily net salary (customer may work less than five days a week).

Basic tax rate payer 2019-2020

- Annual gross pay (up to) £50,000 minus £12,500 (personal tax allowance) multiplied by 0.68 (to account for 20% tax and 12% National Insurance), add back £12,500 = Annual Net Pay.
- Divide by 52 for weekly net salary and then again by the amount of days normally worked each week for the daily net salary (customer may work less than five days a week).

Higher rate 40% band

- 2018-2019: £46,351-150,000
- 2019-2020: £50,001-£150,000

Higher rate 45%

Over £150,000 for 2018-19 and 2019-2020.

To calculate salary for a higher rate tax payer (2018-19 figures used)

- The Responder Hub should use the Basic Rate calculation for the first £46,350 and the following for the remaining amounts over £46,350, but below £150,000.
- Annual gross pay (over) £46,350 minus £11,850 (personal allowance) multiplied by 0.48 (to account for tax and National Insurance), add back £11,850 = Annual Net Pay for higher rate only.
- Add the Higher Rate Annual Net Pay (HRANP) amount to the Basic Rate Annual Net Pay (BRANP) amount for the total Annual Net Pay.
(NB: You will also need to account for a further 2% of National Insurance contributions on all pay above £892.00 per week or £46,350 per annum.)
- Divide by 52 for weekly net salary and then again by the amount of days normally worked each week for the daily net salary (remember that the customer may work less than five days a week).
- The personal tax allowance stated above (£11,850) applies to the 2018–19 tax year.

Example:

Mr Smith earns £140,000 per year and works 5 days per week..

Basic rate calculation:

$\pounds 46,350 - \pounds 11,850 \times 0.68 = \pounds 23,460$
 $\pounds 23,460 + \pounds 11,850 = \pounds 35,310$.
£35,310.00 Basic rate annual net pay

Higher rate calculation:
 $\pounds 140,000 - \pounds 11,850 = \pounds 128,150.00$
 $\pounds 128,150 \times 0.48 = \pounds 61,512.00$
 $\pounds 61,512 + \pounds 11,850 = \pounds 73,362.00$
£73,362.00 Higher rate annual net pay

$\pounds 35,310 + \pounds 73,362 = \pounds 108,672.00$ **Total rate of pay**

2% National Insurance on all earnings above £892.00 pw (£46,350 Per year)

$\pounds 108,672 - \pounds 46,350 = \pounds 62,322$
 $\pounds 62,322 / 100 \times 2 = \pounds 1,246.44$
 $\pounds 62,322 - \pounds 1,246.44 = \pounds 61,075.56$

$\pounds 61,075.56 + \pounds 46,350 = \pounds 107,425.56$
 $\pounds 107,425.56 / 52 / 5 = \pounds 413.18$ **daily.**

Tax allowances change each year, all rates, thresholds and entitlements should be checked when completing calculations. Information about the personal tax allowance can be found at www.gov.uk/income-tax-rates

Loss of National Insurance contributions

1.5.37 Where maladministration has caused a customer loss of earnings, the customer will most likely also not have paid National Insurance Contributions (NICs). However, they would be able to pay voluntary class contributions to make up the gap(s) in their contribution history.

Evidence

1.5.38 Ex-gratia teams on behalf of Immigration Enforcement and UK Visas & Immigration directorates and Border Force complaints handlers should consider requests for NICs when supporting evidence is submitted by the customer. This ensures consistency with the policy that a customer must provide receipts for losses incurred.

HMRC Helpline

1.5.39 Customers can obtain information directly from HMRC which will highlight any NI gaps in the last six years and what payments they would need to make to HMRC in order to bridge that gap. Customers should be advised that they can obtain this information via the National Insurance Hotline on 0300 200 3500 .

Evidence of payment

1.5.40 Customers will be expected to make payment with HMRC and to obtain evidence that this payment has been made. The customer should submit this evidence to the ex-gratia team for consideration of payment.

Student loan deductions

1.5.41 Customers will be expected to make payment with the Student Loan Company themselves, and to obtain evidence of where this payment has been made but a proportional adjustment did not occur when the day's salary was deducted. The customer would need to submit this evidence if this situation occurred.

Loss of benefits

1.5.42 The Department for Work and Pensions (DWP) will not generally pay benefits unless a person can show that they have Indefinite Leave to Remain (ILR) or they are an EU citizen exercising their treaty rights. Tax credits may be claimed by customers who are in work but are low paid. Tax credits and benefits are paid directly into bank accounts or into Post Office card accounts.

Benefit three month time limit

1.5.43 In some circumstances a customer may request reimbursement of benefits or working tax credits due to maladministration. People who have been granted ILR as a refugee may claim backdated Tax Credits and Child Benefit if they make a claim through HMRC within three months of the grant of leave. Ex gratia payments should not be made where the customer could have made a complaint within the three month period and failed to do so without reasonable cause.

Incorrect addresses

1.5.44 In some cases decision letters may have been sent to the wrong address or may not have been served to them at all. This could have prevented applicants from claiming backdated benefits from DWP or HMRC within the requisite timescale. The ex-gratia team should consider offering an ex-gratia payment for loss of benefits in these circumstances.

Evidence required

1.5.45 The ex-gratia team needs to obtain the following information in order to assess claims for loss of benefits:

- Date applicant would have been entitled to payments (this is the date they claimed asylum)
- Date ILR was granted
- Whether the applicant received asylum support, Local Authority or charity payments (this will determine whether they are in fact entitled to any other benefit)
- Date asylum support ended, or support from the Local Authority or charity ended (if support was received)
- How much benefit the applicant would have been entitled to
- Frequency of the benefit payments (e.g. Jobseeker's Allowance is paid every two weeks, but Carer's Allowance is paid weekly in advance).

Benefit entitlement link

1.5.46 Information regarding entitlement to Income Support or Jobseeker's Allowance can be obtained from www.gov.uk/browse/benefits

Benefit checks and data protection

1.5.47 Information regarding any support that the applicant received can be obtained from the case owner, the applicant's Local Authority or the charity in question. Requests to Local Authorities or other third parties should make clear that the request is, in the requestor's judgement, consistent with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA 2018). Suggested wording for the request is provided below.

"The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA 2018) operate to safeguard information and in particular require that personal data shall be processed fairly and lawfully.

The UK Visas & Immigration [Responder Hub name]/Border Force requires a copy of [insert details of required document(s)] for [insert legitimate reason for requiring the information]. We consider that disclosure of the data to the Home Office will comply with the GDPR and DPA 2018 should we require it for our immigration function as the processing is necessary for the exercise of function of a government department. ”

Asylum support payments

1.5.48 If the customer has been receiving asylum support payments and/or Local Authority payments and/or charity payments, the ex-gratia team should establish how much they received during the period in question and establish how much benefit DWP would have paid during the same period. If the applicant would have received more money from DWP, the difference should be paid.

Maladministration prior to 14 June 2007

1.5.49 Prior to 14 June 2007, those granted refugee status or humanitarian protection were able to claim backdated payments if the ex-gratia team accepted that the delay in deciding their status was a result of maladministration.

They would have been paid the difference between the Jobseeker's Allowance rate at that time and actual payments they had received in asylum support from their Local Authority and NASS during the time that their asylum claim was being determined.

On 14 June 2007, following the introduction of the integrated loan scheme for those granted humanitarian protection or refugee status, this ceased.

There may still be some cases where maladministration occurred **before** 14 June 2007 which resulted in the applicant being unable to claim backdated benefits with DWP before the change in policy. These cases require consideration of whether financial redress including backdated benefits may be granted by the Home Office.

Case study

Mr B is a higher rate tax payer who applied for a Tier 1 visa. He attended the PEO on June 2013 and completed his biometrics but unfortunately there were IT failures in the PEO and his biometrics failed. He was asked to attend the PEO again in August 2013.

Mr B requested return of his application fees for both days' paperwork and parking charges. He also requested two days' reimbursement of salary and provided a wage slip as evidence.

Mr B's employer was asked to provide details of his contract or confirmation of his gross salary and the basis on which he was employed, as his wage slip did not provide this information, and how many days per week/year Mr B worked. Mr B is paid on a monthly calendar year basis.

Calculations are done on annual gross pay, but we do not make payments including tax and therefore the net rate is used.

A higher rate tax payer has a personal allowance, pays tax on the basic rate and then on the higher rate of tax.

Consideration

Mr B is a higher rate tax payer earning £140,000 during 2018-19

First calculate Mr B's basic tax rate as he earns more than this.

£46,350 minus the personal tax allowance of £11,850 multiplied by 0.68 (to account for 20% tax)

= 23,460 + £11,850 personal allowance.

= £35,310 Basic rate annual net pay.

£140,000 minus £ 11,850 =128,150

128,150 multiplied by 0.48 = 61,512

Now add back the personal tax allowance of £11,850

= £73,362 Higher rate annual net pay

Add the two rates of pay together to get the total rate of pay

£35,310 + £73,362 = £108,672.00

2% national insurance rate on all earnings above 892 per week (£46,350 per year).

£ 108,672 – £46,350 = **£62,322**

£62,322 divided by 100 X 2 = £1,246.44

£62,322 - £1,246.44 = **£61,075.56**

Add in national insurance rate based on weekly rate

£61,075 + £46,350 = £107,425.56

£107,425.56 divided by 52 and then again by the amount of days worked 5

= £413.18

Variations when calculating salaries. The Home Office only reimburses for actual loss of salary.

Had Mr B been part time and attended one of the appointments on one of his non working days, evidence would have been needed of his working pattern from his employer.

The first appointment would have been necessary for his visa processing; the second would be a direct result of an IT failure. If Mr B's attendance fell on both his non working days we would not reimburse for salary he would not have been paid, but would consider the impact of the inconvenience for one of the day's attendance.

Had Mr B been paid gross on a three month contract based on days worked per week, excluding weekends, the calculation would have been based on the average net day pay rate based on 60 working days for the contract.

If Mr B were self employed, his appointments or work would generate a gross payment. Unless he earned below the personal allowance and provided evidence of this, a net (tax deducted) payment would always be paid.

Legal fees

1.5.50 UK Visas & Immigration, Immigration Enforcement and Border Force will only consider reimbursing customers for legal fees if the costs have been incurred as a **direct result** of its maladministration **and** the customer could not reasonably have been expected to take any further steps of their own in trying to resolve the matter without recourse to legal assistance.

Complaint submission requirement

1.5.51 A customer must have made a complaint to the Immigration Enforcement, UK Visas & Immigration and Border Force and allowed them a reasonable opportunity to resolve the matter before consideration will be made to paying court fees and other costs incurred.

Evidence

1.5.52 The Responder Hub should obtain the following information in order to assess a claim for an ex-gratia payment for legal fees:

- A detailed breakdown of the legal fees from the solicitors, including what the fees were for (letters, telephone calls, meetings, preparation of documents).
- Confirmation that the bill has been settled by the customer (the Home Office cannot pay the representatives directly as the contract is between the representatives and their client).

Application fee refunds

1.5.53 In the vast majority of circumstances fees regulations do not compel the Home Office to refund a fee paid for as specified within the Regulations. However, in certain circumstances, it is appropriate to refund the fee. Ex-Gratia decision makers should consult the Fees and Income Planning Team for further advice if needed.

1.5.54 Immigration Enforcement, UK Visas & Immigration and Border Force will not refund a fee if someone applies for something even though they do not meet the requirements of the Immigration Rules or other relevant legislation.

Reimbursement of refund principles

1.5.55 If an error amounting to maladministration is made by the Home Office, then decision makers should take suitable remedial action. Where a fee is involved, the Responder Hub should take such action as may be necessary to ensure that the applicant is not disadvantaged financially by the maladministration. Some examples of maladministration are:

Handling errors

1.5.56 A customer's passport has been lost within the UK Visas & Immigration directorate, and as a result an endorsement has been made on a status document. The applicant has subsequently obtained a new passport and submitted a paid application for a No Time Limit (NTL) stamp or Transfer of Conditions (TOC) endorsement.

Misleading advice

1.5.57 A customer has been given misleading advice by Immigration Enforcement, UK Visas & Immigration or Border Force. In any cases of this sort, there will need to be supporting evidence. If it is alleged that the incorrect advice was given by an Immigration Enforcement, UK Visas & Immigration or Border Force source, confirmation of maladministration should be obtained from that source to determine if a refund is appropriate. Other factors should also be taken into account, such as any relevant information on the Home Office website or in the application form (or accompanying guidance notes). If the advice was provided by one of our commercial partners then the question of reimbursement will normally be investigated by and decided on by that partner in consultation with UK Visas & Immigration.

Examples

1.5.58 An applicant has been given misleading advice by an entry clearance officer. An example of this was the misleading information given by entry clearance officers in Islamabad and Bombay (now Mumbai) to people issued with spouse visas between 2002 and 2005. This particular example, which resulted in premature applications for ILR by visa holders who had travelled late, is one where there was an alternative to refunding the fee: the premature application was held until the qualifying period had been completed.

Other circumstances justifying a refund of fees

1.5.59 In addition to cases involving maladministration, there are other circumstances in which, as a matter of policy, where a refund will be appropriate, such as:

- An application is marked void or cannot be processed.
- An application for Leave to Remain or NTL by someone who is a British citizen or had the right of abode in the UK at the time of application.
- Where a postal or online application has been withdrawn within a short time of being made, and biometrics have not been enrolled i.e. before it has been entered onto the case working system (e.g. CID), or within 7 calendar days of the date of application, whichever is the earlier date.
- Where an applicant dies before the decision on their application is despatched.

Refusing a refund

1.5.60 Whilst the above scenarios are not a comprehensive list of situations where a refund would be considered, circumstances beyond these should only be based on compelling reasons.

Circumstances where a refund will not be considered:

- Application or claim is withdrawn.
- Application or claim is refused.
- Applications made too early.
- Where an application is made for limited Leave to Remain, but it appears that the applicant already has the appropriate period of leave.
- Where an applicant applies for NTL and they have been naturalised before the date of decision, but after the date of application.
- Where someone granted leave as a refugee is applying for that leave to be transferred into their national passport.
- Where an EEA national or their family member makes a charged application for leave to remain in the United Kingdom.

Case study

Mr N complained that he had made two separate calls to the Croydon Contact Centre saying that he would like to apply for ILR but was concerned about his absences from the UK in 2013. These absences were over 180 days but they were work related. Recordings of both calls were examined and in both instances the Call Agent confirmed that if the absences are work related then Mr N can provide a letter from his employer which confirms this. This information is clarified by the Call Agent a number of times. Mr N makes an ILR application through a Premium Service Centre on this basis and his application was refused as he did not meet the absence requirements

The information given was incorrect and a refund for the cost of the application and the premium service fee was given via Ex-gratia.

Appeal fees

In cases when the judge makes a direction as part of the appeal hearing, reimbursement of appeal fees falls under the remit of Ministry of Justice. If you receive a claim where the fee is due to be paid by Ministry of Justice you can email the details to 'appeals fees enquiries' and advise the customer that you have chased this payment on their behalf.

There will be occasions when the ex-gratia officer will see requests for reimbursement of the fees paid. These will normally be when the Home Office has withdrawn an appeal prior to an appeal hearing. These will be judged on a case by case basis as to whether it is appropriate for reimbursement to be made.

1.6 Non financial loss

Approach

1.6.1 The usual approach to complaints where there is no financial loss or no evidence of a financial loss is to offer an apology and explanation. This may be appropriate and sufficient in many cases; people complaining may also want reassurance that mistakes will not be repeated.

Direct cause

1.6.2 In cases where maladministration has directly caused the customer exceptional distress, embarrassment, inconvenience, damage to health etc. decision makers may

consider whether a consolatory payment is appropriate. A consolatory payment is a special type of ex-gratia payment where the customer has suffered injustice or hardship arising from maladministration.

Exceptional circumstances

1.6.3 Consolatory payments for non-financial loss will only be paid in exceptional circumstances and only where there are sufficiently compelling circumstances to justify such a payment.

Comprehensive assessment

1.6.4 The ex-gratia team should consider the issues and the level of distress. However, payments are consolatory and are not intended to be based on a comprehensive assessment of the distress actually suffered (as these are consolation payments only).

A consolatory payment should be offered when:

- Serious or persistent errors have been made.
- The ex-gratia team is reasonably satisfied that maladministration led to the distress as the customer has claimed.

Actual and consolatory payment differences

1.6.5 Care should be taken to differentiate between general ex-gratia payments for actual financial loss and a consolatory payment. It is not appropriate to offer a consolatory payment instead of an ex gratia payment for actual financial loss where it has not been possible to obtain sufficient evidence to support the claim.

Case by case basis

1.6.6 Each case must be considered on its own merits, both in respect of whether a payment should be made and the amount that should be offered. This is necessarily subjective but should reflect the degree of distress experienced by the customer. Not everyone will react to the same circumstances in the same way; a harrowing situation for someone could be a minor inconvenience to somebody else.

Considerations

1.6.7 When deciding claims for non-financial loss, the ex-gratia team will need to look at:

- how serious the error caused by maladministration was;
- how long the error has persisted;
- what is the impact of the error; and
- what is the duration of the impact on the customer.

Affected health

1.6.8 If there is an allegation that the maladministration has affected the customer's health, objective evidence of the impact on their physical/mental health will need to be provided. This may take the form of a report from their GP or evidence from an employer that they have been unable to work as a direct result of the ill health.

Decision makers should approach HOLA for expert advice in physical/mental health cases such as:

- complex cases, where evidence is difficult to assess; or

- cases where there have been multiple instances of maladministration causing distress; or
- cases where decision makers are considering making a payment in excess of £20,000 (with a significant proportion being based on non-financial loss).

1.6.9 In some cases objective evidence will not be necessary where it is self-evident that severe distress would have been caused. An example would be a parent incorrectly being informed of their child's death.

Guidance table

| General circumstances in which the ex-gratia team may decide to make an ex-gratia/consolatory payments | |
|---|---|
| £50 - £250 | <ul style="list-style-type: none"> • Failure to answer correspondence. This depends on the number of letters and the length of time involved. • Cancelling interview/appointments without notice. This depends on the degree of inconvenience caused. • Badly mishandled/delayed ex-gratia payments. |
| £50 - £400 | <ul style="list-style-type: none"> • Delay in dealing with application caused by error, e.g. files lost, incorrectly laid by, passed between Directorates without action being taken. |
| £100 - £300 | <ul style="list-style-type: none"> • Documents/files lost or other maladministration resulting in a missed holiday. |
| £100 - £350 | <ul style="list-style-type: none"> • Enforcement Officers visit an address where illegal immigrants are wrongly thought to be staying and cause unnecessary worry for the occupier. |
| £200 - £400 | <ul style="list-style-type: none"> • Breach of confidentiality by passing on information to a third party, including sending passports or other personal documents to an incorrect recipient. • Missed family wedding or other family celebration (this will depend on how close the family member is). |
| £200 - £500 | <ul style="list-style-type: none"> • Delays/errors resulting in uncertainty about possible removal from the UK. |
| Up to £1000 | <ul style="list-style-type: none"> • Inability to attend a dying relative or family funeral (this will depend on how close the family member is). • Incorrectly removing a person from the UK (this will depend on individual circumstances). |

Case study

Ms Z was seeking reimbursement for maladministration by Immigration Enforcement officers for damage to her property. Ms Z is resident in Scotland, but her rental property is located in London.

A warrant was issued to an enforcement team on 8 June 2013 for Ms Z's rented London property for the arrest of a suspected immigration offender. No one answered at the property on that date and entry was made through a window. A copy of the warrant was not left on the premises on this visit.

Because of this, officers visited the property two days later. On this occasion the officers were let into the property by one of the tenants and during this visit damage was caused to internal doors which were forced (during the search of a false ceiling). Tenants were provided with their own keys to locked bedrooms within the property.

Ms Z claimed for one return flight, damage to the property during the execution of the search warrant, and overnight accommodation. She also claimed for telephone calls, stationery and postal costs. She further claimed that the tenant's property had not been left secure and this had caused additional stress and distress.

The Home Office has no legal liability to pay for damage during the execution of a search warrant for an immigration offender. The damage in this case was caused during the visit two days later. An internal email admitted that the warrant was out of date.

The consideration

On the basis of the evidence provided by Ms Z and the damage being done during the second visit, for which the warrant was out of date:

- Ms Z's return flight from Scotland to London, taking the average of three quotes for the dates she travelled and considering the distance and costs of rail travel.
- Accommodation costs, again taking the average of three quotes from budget hotels.
- Damage to internal doors.
- £50 ex-gratia for distress and inconvenience.

Ms Z's appeal

Ms Z felt that £50 did not cover the distress and requested a higher consolatory payment on the basis that the tenant's property was not secured as directed in enforcement policy.

This was refused as no damage had been done to the property to enter it – one of the tenants had let the officers in. The whole property was therefore secure with no locks broken when the officers left it. Locks were broken during the search as tenants had locked rooms and officers wanted to ensure the immigration offender was within the locked accommodation; however, the property itself was considered to be one property and was secure. A legal warrant would have covered all of the property.

Landlords and the Immigration Act 2014

1.6.10 The Immigration Act 2014 places a legal obligation on landlords to ensure tenants are not disqualified from renting due to their immigration status (i.e. that the tenants have a 'right to rent' before renting to them).

www.gov.uk/check-tenant-right-to-rent-documents

- In order to avoid incurring a civil penalty the landlord must carry out specified document checks on every adult who will occupy the premises as their only or main home, before they enter into a tenancy agreement.
- If an occupier is not named on the tenancy agreement but has no right to rent, the landlord remains liable for a civil penalty in respect of that occupier.
- If the prospective tenant is a British or EEA citizen, or has indefinite leave to remain, the landlord will not have to undertake any follow up checks prior to any subsequent tenancy renewals. The landlord must keep a copy of the documents they have checked for at least one year after the tenancy comes to an end.
- If the prospective tenant has limited leave to remain in the UK, the landlord will have to undertake follow up checks, to confirm that the person continues to have the right to remain in the UK.
- These follow up checks should be carried out:
 - (i) Within 12 months
 - (ii) Before the person's permission to be in the UK expires, or
 - (iii) Before the expiration of the validity of the document which showed their right to be in the UK, whichever is later.

For example, if the tenant is a visitor and only has six months' leave, the landlord only needs to undertake a follow up check within 12 months; a six month follow up check would be disproportionately burdensome on the landlord. If the person is a student with three years' leave, the landlord would not have to do the follow up check for a full three years.

- If, when they come to do the follow up check, the tenant's leave has expired, the landlord is required to report that person's presence to the Secretary of State as soon as reasonably practical in order to maintain an excuse against a civil penalty for allowing occupation by an illegal migrant.
- While the landlord is prohibited from knowingly renting to an illegal migrant, and the landlord must report the presence of an illegal migrant to the Home Office if they are in occupation, the landlord is under no obligation to evict an illegal migrant. They may choose to do so, but the scheme does not require them to evict.
- The scheme is not retrospective. When it came into force, landlords were only required to check the status of new tenants and occupants; they did not have to make any checks on persons already in occupation.
- The Immigration Act 2016 amended the Immigration Act 2014 to create new criminal offences for landlords and agents. The new provisions came into force from 1 December 2016. Landlords can face criminal charges if they know, or have reasonable cause to believe, that their property is being occupied by an adult with no right to rent. It is, however, a defence for a landlord to prove that within a reasonable time of finding out about the contravention they took 'reasonable steps to terminate the tenancy agreement' There is statutory guidance on this point.

Decision makers will consider reimbursement or ex-gratia payments only as a result of maladministration. Decision makers in correspondence hubs are responsible for progressing cases as usual but should notify IMISE (Illegal Migration, Identity Security and Enforcement) of the types of cases being received.

While a landlord will be under obligation to report any illegal migrants to the Home Office after follow up checks, the Home Office is not placed under any reciprocal agreement. It would not be considered maladministration for enforcement officers to legally and properly obtain entry to rented premises without notifying the landlord, even if the landlord has properly notified the Home Office of their presence in accordance with the 2014 Act.

However, multiple penalty notices issued to the same landlord or to the same company may possibly indicate claims for reimbursement/ex gratia which have been created without due care, have been inflated or are fraudulent in some aspects. Decision makers are asked to examine the evidence submitted carefully.

Claims for unlawful detention

1.6.11 All requests for reimbursement or for ex gratia payments alleging unlawful detention should be referred to the relevant Locr Litigation Team.

They will either take the case or provide their advice for the ex-gratia team to consider. As the customer or legal representative has used the internal complaints process, their complaint (if referred back) should be considered within the complaints management guidance and the processes applied.

1.7 Death of a customer

Payment to deceased estate

1.7.1 In the event of the death of a customer who has submitted a claim for an ex-gratia payment because of maladministration and it is decided that compensation is appropriate, then payment should be issued to the deceased person's estate.

Request details of executor/legal representative

1.7.2 The ex-gratia assessor should request details from the next of kin of the name of the executor and legal representative (if appropriate) dealing with the deceased persons estate. The next of kin may not be the beneficiary of the estate and therefore it would not be appropriate to make payment automatically to them.

Next of kin claims

1.7.3 If the next of kin submits a claim for compensation because he or she has suffered actual financial loss and that loss was incurred because he or she helped to support the deceased person, then redress should be offered in respect of the actual financial loss to the next of kin.

Case study

Solicitors on behalf of Mr X's estate requested consolatory payment as Mr X had wished to visit his country of origin to visit his mother's grave prior to his death. They provided background information on Mr X's illness.

Mr X had requested the return of his passport and this had been provided, although the search had taken a few weeks.

Mr X's date of death and confirmation that he would have been fit enough to travel were requested. As these were not forthcoming, after three requests the case was closed.

1.8 Ex-gratia payment claims where there is a suspicion of attempted fraud

Protection of public funds

1.8.1 The Home Office is committed to the prevention of fraud and the promotion of an anti-fraud culture. Like all Government departments, it has a responsibility to protect public funds. Home Office directorates, Immigration Enforcement, UK Visas & Immigration and Border Force operate a zero-tolerance policy to all instances of actual, attempted and suspected fraud. The Home Office will investigate all instances and, in appropriate cases, will seek criminal prosecution and the recovery of its funds and assets.

Fraud Act 2006

1.8.2 The Fraud Act 2006 includes three classes of fraud:

- fraud by false representation;
- fraud by failing to disclose information; and
- fraud by abuse of position.

Definition of fraud

1.8.3 Fraud is considered to be any attempt to knowingly cause a financial loss to Immigration Enforcement, UK Visas & Immigration or Border Force.

Reporting fraud

1.8.4 All those who work for or on behalf of Immigration Enforcement, Visas & Immigration or Border Force have a responsibility to protect the financial interests of the Home Office and its assets. All members of staff are expected to ensure that Immigration Enforcement, UK Visas & Immigration or Border Force's reputation and assets are protected against fraud and to report any suspicion of fraud to their managers. All managers are expected to support staff members who discover fraud and to ensure that all allegations are forwarded on to the relevant unit for investigation or to the police.

Staff expectation

1.8.5 Immigration Enforcement, UK Visas & Immigration and Border Force expect their staff, corporate partners and customers to act honestly at all times and to report immediately any suspicions that they have of any wrong doing. Immigration Enforcement, UK Visas & Immigration and Border Force will treat all reports in confidence and investigate all allegations to establish any wrong doing and protect their finances and assets.

Referral to NDFU

1.8.6 Service complaints may result in an ex-gratia payment to reimburse complainants for their time or lost property, such as birth certificates and passports.

There have been some instances of individuals submitting falsified receipts and bank statements in attempts to deceive the Home Office into making a larger ex-gratia payment than would be due. This is a criminal act and all members of staff and managers should be aware of the potential for fraud when dealing with claims for ex-gratia payments. Any member of staff who has suspicions about the validity of any claim for an ex-gratia

payment must make their manager aware without delay to limit any potential losses to Immigration Enforcement, UK Visas & Immigration and Border Force. Where it is suspected that the customer has supplied documentation that is false, the National Document Fraud Unit should be consulted. Further details can be found on the [National Document Fraud Unit webpage on Horizon](#).

Consideration on payment

1.8.7 Whilst all genuine claims for ex-gratia payments must be paid within current guidelines, a policy decision on how to proceed with a suspected fraudulent claim will need to be made by the Responder Hub. The general principle to be applied is that an ex-gratia payment should only be paid where the evidence provided in support of that claim is valid. Where some of the evidence is valid and some of it suspect, an ex-gratia payment should be paid for those parts for which the evidence is valid; no payments should be made where, on the balance of probabilities, the evidence is thought to be fraudulent.

Customer notification

1.8.8 The reasons for any delay in making an ex-gratia payment must be written down and authorised at the appropriate level, as these decisions may be subject to scrutiny at a later date. The question to ask ourselves when making these decisions is “are our actions reasonable in light of the facts we have?”

1.8.9 Investigations into potentially fraudulent ex-gratia payment claims must be undertaken in a timely manner and the actions taken should be justifiable and fully documented. Where there is good evidence that fraud may have occurred, the case should be referred to the police for investigation as soon as practicable.

1.8.10 Those involved in the processing of a suspected fraudulent claim should keep auditable notes of their actions and decisions. Any documents and correspondence received could potentially be used as evidence in a criminal trial and should be stored in a secure location with limited access.

1.8.11 Customers should not be informed that they are under suspicion as this could compromise any potential criminal investigation.