

Redress Policy and Guidance

1 Introduction

This Policy sets out the Scottish Public Services Ombudsman (SPSO) approach to resolving a complaint or request through recommendations for change and/or redress.

The Scottish Public Services Ombudsman Act (2002) gives the Ombudsman the authority, in defined circumstances, to investigate a complaint or request. The Act states that it is for the Ombudsman to decide whether to initiate, continue or discontinue an investigation, and that the Ombudsman may take such action in connection with the complaint or request as the Ombudsman thinks may be of assistance in reaching any such decision which may include action with a view to resolving the complaint or request.

The function, then, of the SPSO is to resolve complaints. That literally means to find a solution or settle a problem or controversy. While the needs and wishes of the complainant and the views of the authority under investigation are taken into account, resolution of the complaint is to the satisfaction of the SPSO.

As part of the resolution of a complaint, the SPSO may make proposals for action by the body. This Policy outlines the basis on which the SPSO makes such recommendations.

2 Recommendations for Change

This means action by the authority to ensure that complaints are used to drive improvement and ensure, as far as possible, that when something has gone wrong the same thing does not happen to someone else. They may include:

- changes to procedures
- changes to policy
- staff guidance and training
- clear feedback to demonstrate that changes have been made

3 Recommendations for Redress

Redress is setting right what is wrong. The general principle is that, wherever possible and practicable, someone detrimentally affected when something has gone wrong should be returned to the position they would have been in if the failure

had not occurred. It is essential from the outset that complainants are given realistic expectations about what the SPSO can achieve.

Redress should be proportional to the degree and nature of the failure and hardship or injustice suffered.

Redress for the complainant may include some or all of the following:

- an apology (see our separate SPSO *Guidance on Apology*)
- an explanation (see above)
- practical action to mitigate any detriment
- where possible, reimbursement of actual loss and/or costs incurred
- a modest payment in recognition of time and trouble taken to make the complaint or as a tangible expression of regret
- other appropriate action suggested by the complainant or the organisation

Redress should:

- be fair and reasonable
- take into account the wishes and needs of the complainant
- be procedurally sound
- be provided in a timely manner
- provide, as far as possible, a comprehensive resolution of the issue remembering that it may apply not only to the complainant but others who have suffered as a result of the same failure.

Redress may be limited by:

- the time elapsed since the problem occurred
- the degree to which the complainant had a contributory responsibility for the failure and the detriment suffered
- the capability of the organisation to comply

4 Compliance

When an authority has said it will take action or when we have made recommendations for change or asked for redress, then we will follow up to make sure that it has happened. If it appears to the SPSO that the injustice or hardship has not been remedied then the Ombudsman may lay before the Parliament a Special Report on the case.

Guidance

1 Introduction

It may be helpful for bodies to understand at what point in the SPSO process we may make recommendations for action and the principles on which we base any recommendations for redress that involve financial payments.

2 Recommending Action

In handling a complaint we first consider whether the complaint is one we can investigate and whether or not it has come to us too early. During consideration at this stage, we can propose action that may inform our decision whether or not to initiate an investigation and which may resolve the complaint.

After investigation we may uphold, partially uphold or not uphold the complaint. In any of these circumstances we may make recommendations for change. Additionally, if the complaint is upheld in full or in part, we may conclude that the failure has caused injustice or hardship and recommend appropriate redress.

3 Principles for Recommending Financial Payments

Any calculation of a recommendation for financial payment should take into account any degree to which the complainant has contributed to the failure or loss suffered. The calculation and reasons for each element should be clearly recorded.

4 Payments for Actual Loss or Costs

These should be calculated on the basis of demonstrable loss or costs.

5 Time and Trouble Payments

A time and trouble payment is distinct from payments for actual losses or costs and covers:

- time and trouble reasonably and legitimately expended by the complainant in having to pursue the complaint with the listed authority and with the Ombudsman; and
- minor items of expenditure and financial loss which are not otherwise taken into account in the redress recommended

Anyone pursuing a complaint can normally be expected to incur a certain amount of time and trouble and minor costs. A time and trouble payment will not therefore be appropriate in every case. It should be made only where it can be justified on the basis that the facts of the case show that time and trouble and minor costs for the complainant were more than would routinely be required for pursuing a complaint.

In the assessment of the time and trouble payment, consideration should be given to all relevant factors in the case which could include, for example (though this is not an exhaustive list):

- the passage of time, including response times by the authority in relation to the nature of the problem
- the amount of time and effort which the complainant had to devote
- difficulty experienced by the complainant in dealing with the authority
- the degree of inadequacy in the response of the authority to letters, phone calls and visits
- whether this is a problem we have encountered with the authority when dealing with other complaints and have asked them to improve.

6 Consistency

When making recommendations it is essential that, as far as possible, consistency is maintained.

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Reorders

SPSO advice