

Redress Policy

1 Introduction

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

Redress is not the same as compensation (although they can be similar).

- **Redress** is setting right what went wrong for an individual or group of individuals. This means that, wherever possible and practicable, someone detrimentally affected as a consequence of when something has gone wrong should be returned to the position they would have been in if the failure had not occurred. This may include reimbursement for actual, demonstrable, consequential financial loss.
- **Compensation** is usually used to describe the financial amounts given by courts in damages. Courts will make, sometimes very complicated, financial assessments for non-financial impact such as the physical effects of an injury or for distress, time and trouble and other issues that take the award beyond simple reimbursement. We consider that the complexity of ensuring appropriate financial compensation for personal loss including injury and distress means that it is in the individual's interest that this should be pursued through a negligence claim.

In handling a complaint we can propose action, at any stage, which we consider would resolve the complaint. This may also inform our decision whether or not to initiate or continue an investigation.

This policy relates only to redress in relation to direct loss or harm. We may also make recommendations in relation to service improvement or complaints handling.

2 General Principles

When making recommendations for redress we will:

- focus on loss or harm to the individual(s) that is the consequence of maladministration
- take into account the wishes and needs of the complainant, but equally be clear about the complainant's responsibilities in terms of evidence
- consider carefully what is fair and reasonable
- be proportionate to the loss and the hardship suffered
- aim to provide, as far as possible, a comprehensive resolution of the issue
- explain clearly the reason for the redress and the outcome we want to achieve
- ensure evidence is provided of compliance.

3 Types of Redress

Redress may include some or all of the following:

- an apology (see our separate SPSO Guidance on Apology)
- an explanation
- practical action to mitigate any detriment
- where possible, reimbursement of demonstrable loss and/or costs incurred
- other appropriate action suggested by the complainant or the organisation.

Redress may be limited by:

- how much time has 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 Redress for Direct Financial Loss or Costs

When making a recommendation to redress a financial loss or cost, we will record the reasons for each element and how this should be calculated. The calculation will be on the basis of direct loss or costs incurred as a result of the failing we have identified. Recommendations for financial payment will take into account any degree to which the complainant has contributed to the failure or loss suffered.

Complainants will normally be required to provide the SPSO or the organisation, evidence of the loss to the aggrieved person.

When making a recommendation for financial redress, we will normally issue a date by which payment should be made. Failure to make the payment by that date will normally result in interest being added to the amount payable, running from the date by which payment should have been made. Interest will be charged at a rate deemed appropriate by the Ombudsman (likely the judicial rate of interest).

We may agree not to apply interest to the amount payable if an organisation provides clear evidence that payment on time was not possible and any delay was not a result of their failing. We would expect the organisation to alert us as soon as it was known they could not meet the timescales, so that a revised timescale can be agreed and the complainer/person suffering the loss can be updated.

We would not normally require an organisation to pay interest from the time the loss occurred until our recommendation. However, if a complainer made a case to us, and it was clearly demonstrated by them, to our satisfaction, that loss had occurred, we will consider it, but this must be discussed with the Ombudsman.

5 Compliance

When an authority has said it will take action or when we have made recommendations for change or asked for redress, we will follow up to make sure that it has happened.

We can take the views of the complainant and authority into account when deciding what evidence is needed to demonstrate compliance. However, the SPSO is responsible for making the recommendations and remains responsible for deciding what evidence is needed to demonstrate compliance. For example, SPSO will need to confirm that the wording in an apology is appropriate.

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 under powers provided by section 16 of the Scottish Public Services Ombudsman Act 2002.

Redress

For further information please contact:

SPSO

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Edinburgh

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Advice line freephone: **0800 377 7330**

Fax: **0800 377 7331**

Website: **www.spsso.org.uk**

Online contact form: **www.spsso.org.uk/contact-form**

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