

A false economy

Investigations into how people are recompensed for government mistakes



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‘When government organisations make a mistake, they should try to put the person affected back in the position they would have been in if the mistake had not happened.’

Dame Julie Mellor, DBE

Foreword

The role of the Parliamentary Ombudsman is to consider complaints that government organisations have not acted properly or fairly, or that they have provided a poor service. If there has been injustice, sometimes this means acting as a champion to support individual people who challenge government bureaucracy. Sometimes it also means drawing mistakes made by government organisations to the attention of Parliament, to help ensure that other organisations do not repeat those mistakes.

This is the first time since my appointment in January 2012 that I have needed to inform Parliament about a group of investigations from which other organisations can learn. This is a short report that sets out a fundamental principle of good complaint handling. I am laying this report before Parliament under section 10(4) of the *Parliamentary Commissioner Act 1967* because these investigations provide simple, but important, lessons for all government organisations about remedying complaints, especially during a period of budgetary constraint.

The *Ombudsman's Principles* set out what organisations should do to deliver good administration and how to act when things go wrong. Government organisations have signed up to those Principles, and they are recognised in HM Treasury's guidance, *Managing Public Money*. One of the Principles is 'Putting things right'. When government organisations make a mistake, they should try to put the person affected back in the position they would have been in if the mistake had not happened. This report looks at four complaints about the Planning Inspectorate's decisions not to compensate individuals for mistakes that had caused these individuals to incur extra expense.

We upheld all four of these complaints, and asked the Planning Inspectorate to put things right for these complainants and for others affected by the decision. We are pleased to say that the Planning Inspectorate responded positively to our recommendations. They put things right for these complainants and also provided a financial remedy for 14 other people and organisations who had been wrongly refused a remedy. Importantly, they reviewed their guidance that explains how they will consider claims for financial redress in future.

This report sets out the complainants' stories, our findings and recommendations to put things right and the learning points for the Planning Inspectorate and other government organisations.

Dame Julie Mellor, DBE
Parliamentary Ombudsman

October 2012

Introduction

Until 31 March 2011, the Planning Inspectorate operated an ex gratia payment scheme. In certain circumstances they made payments to complainants, following an error. The payments could cover almost any area of the Planning Inspectorate's work, including the situations described in this report.

In 2010 the Planning Inspectorate were required to reduce their spending by 35 per cent by 2014-15. That meant finding headline savings of around £9 million per year. The Planning Inspectorate's management board identified the removal of the ex gratia payment scheme, which then had an annual budget of £250,000, as a way to save money. They decided to close the scheme and said that in future they would only make payments in exceptional circumstances, such as where the Ombudsman felt that a consolatory payment for hurt feelings, inconvenience or stress was necessary. They estimated that this would cost around £25,000 a year.

This report describes how that decision affected four complainants.



Case studies



Mr A's story

Mr A has a footpath on his land that he allows members of the public to use. The local council decided that the footpath should become a public right of way, to allow members of the public to use the footpath without Mr A's permission. Mr A challenged that decision. The Planning Inspectorate arranged a public inquiry to determine whether Mr A's footpath should become a public right of way. The Planning Inspectorate suggested that the inquiry take place either on 25 May or 2 June 2011. When those dates were unsuitable, the Planning Inspectorate rescheduled the public inquiry for 31 May. Mr A arranged for a professional land access consultant to represent him at the public inquiry.

Mr A and his representative attended the public inquiry on 31 May, but the planning inspector failed to attend. The inquiry was cancelled because he was not there.

The Planning Inspectorate realised that they had not updated the planning inspector's diary when they changed the date of the public inquiry.

Mr A wrote to the Planning Inspectorate and said that the error had caused him inconvenience, and that his representative's fee of £3,970 had been wasted. Mr A asked the Planning Inspectorate to pay his costs. The Planning Inspectorate apologised for their error but said they would not pay Mr A's costs because it was not appropriate for them to make such a payment in a time of financial constraint. The Planning Inspectorate said they would make a payment if they received a recommendation from the Ombudsman.

After the Ombudsman's investigation, the Planning Inspectorate apologised to Mr A, paid his costs of £3,970 with interest, and £500 for the inconvenience they had caused him.

Mr B's story

Mr B had added a caravan site to his agricultural land, for which the local council said he did not have planning permission. Mr B appealed to the Planning Inspectorate, who granted that planning permission. When the local council challenged that decision, the Planning Inspectorate reconsidered and agreed that their decision had been flawed. The decision to grant planning permission was quashed and Mr B's case was considered afresh by the Planning Inspectorate.

Mr B incurred additional costs in having his case redetermined. The Planning Inspectorate told Mr B that they had guidance about how they would consider meeting those costs.

Mr B was reassured that the scheme would cover his reasonable, additional costs. The Planning Inspectorate held a public inquiry and upheld the local council's decision. Mr B was not granted planning permission for the caravan site.

Following the Planning Inspectorate's decision, Mr B submitted a claim for his additional costs, which he said amounted to £35,013. In response, the Planning Inspectorate said that despite their previously published guidance, they had taken a decision not to offer any payments unless the Ombudsman recommended that they do so.

After the Ombudsman's investigation, the Planning Inspectorate apologised to Mr B, and paid his costs of £35,013 with interest, along with £500 in recognition of the inconvenience they had caused him.





Company C's story

Company C operated a motocross track on the site of their leisure park. When the local council told Company C that they must stop operating the track, Company C appealed that decision. The Planning Inspectorate held a public inquiry and decided that Company C should have planning permission to operate the track. When the local council challenged that decision in the High Court, the High Court said that the planning inspector's decision had been flawed and quashed the decision to grant planning permission. That meant that Company C's case had to be considered afresh.

The Planning Inspectorate told Company C that they had guidance enabling them to consider making a payment to meet the extra costs the company incurred in redetermining the case. Company C pursued the redetermination, believing that their costs would be met.

The Planning Inspectorate held a second public inquiry and decided that Company C must stop operating the motocross track. Company C then wrote to the Planning Inspectorate, claiming costs of £48,117 that they had spent pursuing the redetermination. In response, the Planning Inspectorate said that they had recently reviewed their policy and had decided it was not appropriate to offer payments, especially in a time of financial constraint, unless the Ombudsman recommended that they do so.

After the Ombudsman's investigation, the Planning Inspectorate apologised to Company C and paid their costs of £40,294.30 with interest, and £250 in recognition that the Planning Inspectorate's mistake had lost Company C the opportunity to mitigate some of their expenses.

Mr D's story

Mr D had a barn on his land, which he converted into his home. The local council said that Mr D had built a dwelling without planning permission and told him that he must demolish his home. Mr D appealed against that decision. When the Planning Inspectorate considered Mr D's case, they decided that Mr D should not be granted planning permission for the changes he had made to the barn.

Mr D appealed to the High Court, who decided that the Planning Inspectorate had made an error in their decision. The High Court quashed the decision, which meant that Mr D's case had to be considered afresh. The Planning Inspectorate advised Mr D that they would consider making a payment to meet the reasonable costs he incurred in pursuing the redetermination.

The Planning Inspectorate reconsidered Mr D's case but they refused to grant him planning permission. Mr D was given one year to demolish his home or turn it back into a barn. Mr D wrote to the Planning Inspectorate to make a claim for £22,418 for the costs he had incurred pursuing the redetermination. In response, the Planning Inspectorate said that despite their previously published guidance, they had decided not to offer any payments unless the Ombudsman recommended that they do so.

After the Ombudsman's investigation, the Planning Inspectorate apologised to Mr D and paid his costs of £22,418, with interest, along with £500 in recognition of the inconvenience they had caused him. Mr D told us that he had used that money to turn his home back into a barn.



Our findings

In each of the cases outlined, the Planning Inspectorate made a mistake.

In Mr A's and Mr B's cases, the Planning Inspectorate accepted that they had made an error. In Company C's and Mr D's cases, the High Court made that decision. In Mr A's case, the Planning Inspectorate acknowledged that their mistake had caused him extra costs. In the other cases, the Planning Inspectorate initially told the complainants that they would consider meeting the reasonable costs of their appeals, but then later refused to do so.

Having been responsible for those errors, it was the Planning Inspectorate's responsibility to put things right. They did not do that. Instead, they told the complainants that they would only pay compensation if the Ombudsman recommended that they do so. The Planning Inspectorate's decision to close their *ex gratia* payment scheme was not, in itself, maladministrative; there is no requirement for government organisations to have such a scheme in place. But, with or without a scheme, government organisations do have the power and the responsibility to pay for the impact of their mistakes. The Planning Inspectorate's approach to remedying complaints in the absence of a formal scheme was not acceptable.

The decision not to pay financial remedies without a recommendation from the Ombudsman meant that the Planning Inspectorate expected individual people, in most cases, to bear the costs of mistakes made by the Planning Inspectorate. That was unfair and unjust.

Their decision was also a false economy. We do not doubt that the Planning Inspectorate had been set a challenging target to reduce their expenditure. However, their decision to stop providing financial remedies to complainants, and to require them instead to complain to us in order to obtain redress, was bound to cost more than it would have done if they had put their mistakes right straight away. It was a false economy and an injustice to the people concerned. In the end, the Planning Inspectorate had to consider each of these cases twice, and that should not have been necessary. The Planning Inspectorate's approach did not protect public money and was contrary to HM Treasury guidance¹ and the *Ombudsman's Principles*.

The decisions meant that none of the complainants had their requests for payments properly considered by the Planning Inspectorate. This delayed the resolution of these complaints and caused inconvenience, compounding the impact of the poor service that had occurred in the first place.

Had the Planning Inspectorate properly considered these claims as they should have done, it is likely that they would have made payments to cover the costs claimed. Because they did not do this, the complainants had to complain to us to obtain the redress that they should have received when they first complained to the Planning Inspectorate.

¹*Managing Public Money*, which can be found at www.hm-treasury.gov.uk.

Putting things right

We upheld all of these complaints and made recommendations for the Planning Inspectorate to put things right.

We issued reports for Mr A's and Company C's complaints first. In those cases, we recommended that the Planning Inspectorate apologise to Mr A and to Company C. We also recommended that the Planning Inspectorate pay their wasted costs (£3,970 for Mr A and £40,294 for Company C) with interest and that they make a small consolatory payment in recognition of the inconvenience that the Planning Inspectorate caused Mr A, and because their failure to put things right sooner had prevented Company C from taking action to mitigate some of the costs they incurred.

That put things right for Mr A and Company C, but the Planning Inspectorate's approach had wider implications. As well as these cases, there was another group of individuals and organisations who had been affected by the Planning Inspectorate's decision to stop making ex gratia payments. We recommended that the Planning Inspectorate properly consider all of the other complaints where compensation had been refused solely as a result of the closure of the ex gratia payment scheme. We asked them to give those individuals and organisations appropriate redress too.

The Planning Inspectorate responded positively to that recommendation and promptly considered the other claims they had previously turned down. As well as the four cases outlined in this report, the Planning Inspectorate considered 14 other claims for financial redress. In total, the Planning Inspectorate made payments totalling £312,243 plus interest.

As a result of that work, while we were investigating Mr B's and Mr D's complaints, the Planning Inspectorate put matters right for them. They apologised, paid the complainants' wasted costs (£35,013 for Mr B and £22,418 for Mr D) with interest, and made consolatory payments for the inconvenience the Planning Inspectorate had caused them. Those remedies were sufficient to put matters right for Mr B and Mr D and we did not make any further recommendations to the Planning Inspectorate. As a result of these investigations, the Planning Inspectorate reconsidered their approach to remedying complaints. They amended their guidance to include a new section on '*Putting things right*'. This tells complainants how the Planning Inspectorate will consider claims for financial remedy when the Planning Inspectorate have made an error. The Planning Inspectorate also told us that they have revised their guidance for considering claims for financial redress, and that they will now consider all claims individually, based on the facts of the case.

As a result of our investigations, the Planning Inspectorate have taken appropriate action to put things right. They have provided remedies for all those affected by their decision and now have a process in place to consider claims for financial redress properly. This demonstrates effective learning from these complaints, and an improvement in the service they provide. These investigations were the catalyst for the Planning Inspectorate to reconsider their approach, and the new approach should allow them to deal properly with claims for financial redress in future. That is the most cost effective way to deal with complaints.

Learning Points

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For each of our reports we summarise the learning that can be taken from our analysis of complaints.



Our judgment

The Planning Inspectorate were acting contrary to HM Treasury guidance *Managing Public Money* and contrary to the *Ombudsman's Principles* when they decided they would routinely refuse to pay compensation for the impact of their mistakes on users of their service.

Learning points

The most cost effective way to resolve complaints is to do so properly, as early as possible. That may include paying financial compensation.

The cost of an organisation's maladministration must not be passed on to individuals in an attempt to make budget savings. To do so is unfair, unjust, and a false economy.

Permanent Secretaries, Boards and Senior Managers should:

- **Consider carefully the implications of decisions intended to reduce expenditure, and ask the questions:**
 1. Is there a genuine economy to be made, or may costs be increased by the need to revisit decisions at a later date?

2. If costs are being transferred to individuals, or to other organisations, is that fair and equitable?

- **Take a wider perspective, and consider:**

1. What is the impact on individuals already within the process?
2. How should changes to processes be publicised?

- **Refer to our Principles, and in particular:**

1. In relation to the *Principles of Good Administration*, 'act fairly and proportionately' to ensure that the organisation deals with people fairly.
2. In relation to the *Principles of Good Complaint Handling*, 'get it right' by ensuring there is a procedure in place to provide complainants, and others affected, with a fair outcome.
3. In relation to the *Principles for Remedy*, 'put things right' by ensuring that individuals, and others affected, are put back in the position they would have been in had the mistake not occurred.

Learning Points

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How we reached this view

We investigated and upheld four complaints about the Planning Inspectorate. In each case, the Planning Inspectorate failed to compensate complainants after a mistake by the Planning Inspectorate caused the complainant to incur unnecessary costs. We found that the Planning Inspectorate's approach was maladministrative and a false economy.

Our role

Our role is to consider complaints that government organisations and the NHS in England have not acted properly or fairly, or that they have provided a poor service.

We work to put things right and to share the lessons from those complaints to improve public services.

We are a free service, open to everyone.

Parliamentary and Health Service Ombudsman

Millbank Tower
Millbank
London SW1P 4QP

Tel: 0345 015 4033

Fax: 0300 061 4000

Email: phso.enquiries@ombudsman.org.uk

www.ombudsman.org.uk

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