



Ministry  
of Defence

# Financial Redress for Maladministration

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## 2. Introduction – What is maladministration?

‘Maladministration’ is not defined but is the term that is applied to situations where a department has failed to act properly or fairly and/or has provided poor service, for example: excessive delays, mistakes, rudeness, wrong advice and discourtesy, faulty procedures, and bias.

The overturning of decisions by higher tiers was clearly envisaged by Parliament. However, no provision was made for interest to be paid in such cases or for the reimbursement of legal costs and expenses even though such processes would inevitably delay the point at which entitlement was settled and some additional costs would sometimes be involved. Interest or any associated costs would not, in normal circumstances, be paid when a decision is overturned on appeal or as part of the Internal Dispute Resolution Process (IDRP).

There is, however, an exception to this general policy. Whenever Maladministration is accepted to have occurred, the general principle adopted is to provide redress which is fair and reasonable in the light of all the facts and circumstances of the case. On that basis, where the original decision was wholly unreasonable or clearly incorrect based on the evidence available at the time, it will be accepted that the overturning of the decision was in correction of Maladministration.

In such cases there should have been no need to go through appeals process and the delays involved should have been avoided.

Where this applies a special payment will be considered for the delay in payment being made and any additional costs that were reasonably incurred in getting the matter corrected will be paid.

Dependent on the scheme<sup>1</sup>, the principles to follow may be different. Further information on Maladministration can be found at the Parliamentary and Health Service Ombudsman’s (PHSO) website <https://www.ombudsman.org.uk/about-us/our-principles> and Pensions Ombudsman website <https://www.pensions-ombudsman.org.uk>

## 3. Official Error

Official error can be broadly defined as occurring when:

- a Decision Maker makes a wholly unreasonable or clearly incorrect decision
- the requirements of the law applicable at the time were not followed
- incorrect or inadequate action was taken
- correct action ceased prematurely
- a valid claim was overlooked or ignored
- a customer misdirected (that is, the customer acted on an incorrect or inadequate direction or instruction to his or her detriment).

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<sup>1</sup> Armed Forces Pension Scheme (AFPS) will follow the Pensions Ombudsman principles. Armed Forces Compensation Scheme (AFCS) and War Pension Scheme (WPS) will follow the Parliamentary and Health Service Ombudsman’s (PHSO)

## 4. Redress principles

Managing Public Money (MPM) principles will be followed, when considering redress. Especially MPM 4.12 and Annex 4.14; which states **‘providing remedies so that, as far as reasonably possible, they restore the wronged party to the position that they would be in had things been done correctly’**.

The Responsible Officer (RO) will consider all possible forms of remedy when looking at a complaint and decide on what is the most appropriate redress to return the customer to the position that they would have been in if the Maladministration or error had not occurred.

Financial redress will only be considered without representation from the customer, in exceptional cases, where the Maladministration or error has caused loss of statutory entitlement.

When a request<sup>2</sup> is received to consider financial redress, this request will be considered within the normal guidelines and will follow the normal redress process. The customer will be provided with written reasons as to why the request has been accepted or rejected.

Dependant on the scheme<sup>3</sup>, the principles to follow may be different. Further information on remedy and redress can be found at the Parliamentary and Health Service Ombudsman’s (PHSO) website [www.ombudsman.org.uk/about-us/our-principles](http://www.ombudsman.org.uk/about-us/our-principles) and Pensions Ombudsman. [www.pensions-ombudsman.org.uk](http://www.pensions-ombudsman.org.uk)

## 5. Consideration

### 5.1. What to do to consider if Maladministration or an error has occurred

Once the evidence has been collated the responsible officer (RO) must decide whether an error or Maladministration has occurred. In doing so the following should be considered:

- whether there are any errors made, did this affect the outcome?
- whether the processes were followed correctly?
- whether the claim was subject to unreasonable or exceptional delay?
- whether the actions taken were necessary?
- whether the complainant was provided with the correct information?

This list is not exhaustive. The PHSO has provided Principles of Good Administration, <https://www.ombudsman.org.uk/about-us/our-principles> which provides best practice for administration.

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<sup>2</sup> A request can be in any format it does not specifically have to be in writing.

<sup>3</sup> Armed Forces Pension Scheme will follow the Pensions Ombudsman principles. Armed Forces Compensation Scheme and War Pension scheme will follow the Parliamentary and Health Service Ombudsman’s (PHSO).

## 5.2. What to do if Maladministration or an error has occurred

If Maladministration or an error has occurred and a remedy is required, a decision must be made on the most appropriate form of redress. Redress can take a variety of forms, including (alone or in combination):

- an apology
- an explanation
- correction of the error or other remedial action
- an undertaking to improve procedures or systems; or
- financial payments (financial redress).

## 5.3. Actions to take where Maladministration has occurred

Where Maladministration has occurred, the responsible officer must:

- ensure that the relevant person corrects the error; and
- appropriate redress is considered.

In most cases the correction of the error, a sincere apology and an explanation will be sufficient redress.

## 6. Types of financial redress

There are different types of financial redress, which are categorised as '**special payments**'. It is essential that these are accurately recorded for accounting purposes. The separate sections listed below, provides information on which category would be appropriate. All '**special payments**' in respect of financial redress for Maladministration should be considered under the following categories.

### • Extra-statutory

- loss of statutory entitlement

### • Ex gratia

- actual financial loss
- delay
- consolatory payments
  - gross inconvenience resulting from persistent error
  - gross embarrassment, humiliation, or unnecessary personal intrusion
  - severe distress which has significantly impacted on a customer's physical or mental health.

### • What happened:

this section should record the facts of the case (in chronological order), making it clear which actual facts (i.e., supported by evidence and which are not supported by evidence but provide the complainant's or the businesses view of events).

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- **What should have happened:**

this section should explain the normal process/procedures for dealing with the matter in hand. These act as a benchmark for what happened and should highlight whether appropriate action was taken (i.e., in line with procedures) or whether we did not follow the guidance/procedures/policy in place at that time. If we should have done something differently, what was it and where does it state what should have happened?

- **Has Maladministration been identified:**

If so, how has it affected the individual concerned? This section should explain if we got it wrong. If we did something wrong what was the impact? Sometimes the view of the complainant is not reasonable or there is no clear link between what went wrong and the impact. In these cases, the Decision Maker must outline the complainant's point of view and explain why you do not accept that there is a link. However, if there is something else that is reasonable this should be considered (if a complainant requests financial redress, all forms of redress must be considered by the RO)

- **What redress is appropriate:**

this section is to record the ROs view about how the customer/complainant can be put back into the position that they would have been in if we had not maladministered their case. The redress should address the impact. If the customer has expressed a view about what redress they want or think is appropriate, this must be included. Sometimes requests may not be reasonable, but the RO must show that it has been considered and why it is not possible to provide the requested redress.

## **Exceptional cases not covered by specific instructions/guidance**

Exceptionally, cases may arise which provide a very strong case for sympathetic treatment, but which are not specifically covered by the categories and the criteria described in this guidance. Such cases should not be rejected automatically but referred to the relevant department assistant head.

## **7. Further information on consideration**

### **7.1. Cases with little or no supporting evidence**

If there has been a significant delay between the date of the alleged Maladministration or error and the point at which its effect becomes apparent and the date the complaint was made. There might be little or no documentary evidence available to support or contradict the customer contention that Maladministration occurred. A defensible decision must be reached using whatever evidence is available.

### **7.2. Making a decision on the balance of probabilities**

Documentary or unquestionable proof is not essential for a decision to be made. The fact that documents may have been routinely and correctly destroyed, and there is little/no supporting evidence would not in itself justify refusal to make a decision.

If after investigation it is still unclear that a particular event or incident took place, or whether a particular assertion is true, the responsible officer must decide matters on the balance of probabilities. If the evidence is contradictory, the RO must decide whether there is enough evidence in favour of one conclusion or another. If the RO is unable to decide advice must be sought from the relevant Assistant Head. If there is insufficient evidence to support the request for payment, it should be refused.

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## 8. Delay

### 8.1. Background

There is no comprehensive entitlement in law to provide interest for a period during which individuals or bodies may have been denied money to which they are entitled.

Financial redress cannot be paid for delay without a specific request, unless the delay was due to loss of statutory entitlement.

Compensation for delay is not considered if the amount of arrears of benefit<sup>4</sup> is less than £100.

Where payments are accepted as having been unreasonably and exceptionally delayed due to official error, a special compensatory payment will be considered. This is in recognition of the loss of the use of a sum of money that the customer would have enjoyed but for that delay.

### 8.2. Delays

There are a number of factors to take into account when deciding if a delay constitutes Maladministration:

- the time normally required to administer the relevant process - this does not mean that compensation is appropriate simply because this period has been exceeded - the test is whether the delay is exceptional or unreasonable
- whether the case was complex
- whether there were any other mitigating circumstances
- whether the customers actions added to the delay
- the degree to which the customer can be considered to have suffered financially as a result of the delay
- whether the correct process was followed.

Most processes for administration of Veterans UK business<sup>5</sup> have targets and set time scales. However, in some instances processes will legitimately take longer than others because of the complex nature of the case and the degree of work involved. Therefore:

- failure to complete the process within the clearance target will not, in itself, give rise to a special payment
- a special payment for compensation for delay will only be considered when:
  - a customer has submitted a complaint regarding a delay which includes a request for compensation
  - unreasonable and exceptional delay has occurred and
  - Maladministration has contributed significantly to that delay.

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<sup>4</sup> For purposes of this guidance benefit refers to all awards and allowances for AFCS, AFPS and War Pensions (WP).

<sup>5</sup> For purposes of this guidance Administration of Veterans UK business relates to WPS/AFCS claims/appeals and AFPS pension application.

### **8.3. Areas where unreasonable and exceptional delay may occur**

Consideration can be given to special payments following unreasonable and exceptional delay in the payment of benefit and/or benefit arrears.

Whenever a payment is to be considered under this category, the first criterion that must be satisfied is whether the unreasonable and exceptional delay amounted to or resulted from, Maladministration.

### **8.4. Two types of maladministration**

Maladministration in the context of delay will fall into two types - where either:

- an administrative error has prevented a payment being made or has prevented a correct payment being made; or
- the actual delay constitutes the Maladministration (that is, all relevant information was available but not acted upon).

### **8.5. Maladministration must contribute significantly to the time taken**

In deciding whether to award redress for delay we must take into account the degree to which any Maladministration was involved. If this was not significant (see the paragraph below) then redress is not appropriate.

### **8.6. Has a significant element been caused by Maladministration?**

Delays must be unreasonable and exceptional before redress can be considered. It is necessary to assess whether Maladministration has added significantly to the delay experienced. The term 'significant' in this context is generally interpreted as being:

- when the period (or aggregated periods) of Maladministration contributed to at least one third of the time taken to complete the administrative process.

However, each case should be considered on its own merits.

### **8.7. Normal process time - Benefit interrupted**

Where a regular payment of benefit (or part-payment of benefit) has been interrupted because of a clear departmental error, rather than a delay in awarding benefit, the time normally required to correct the error is three months.

The three month process time will commence from the date the benefit was incorrectly stopped, with interest being calculated from the day following the end of the indicator of delay period.

As with all Special Payments, discretion must be used and each case must be considered on its own merits.

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## 8.8. What is a 'wholly unreasonable' or 'clearly incorrect' decision on a claim?

The position that is to be adopted is similar to that used in Judicial Review. To be regarded as wholly unreasonable, it is not sufficient for the decision to be one that another person would not have made. As Lord Hailsham observed:

'Two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.'

Lord Diplock expanded on that principle by stating that to be 'wholly unreasonable' the decision must be:

'So outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it'.

A decision may be regarded as 'clearly incorrect' if it is self-evident that it is wrong. For example, a Decision Maker may have awarded benefit but the award was wrongly recorded as a disallowance when it came to be implemented. Other accidental or 'slip of the pen' errors that might have adversely affected the customer could be considered under this category.

## 8.9. Delays due to industrial action

In the absence of specific guidance from HM Treasury, compensation for delays caused by industrial action should not be paid: the normal standard of effective administration have been prevented by circumstances beyond its control. This does not preclude the payment of financial redress for other reasons coincident with the industrial action.

# 9. Delays that are not regarded as unreasonable or exceptional

## 9.1. Decisions overturned on review or appeal

The overturning of decisions by higher tiers was clearly envisaged by Parliament. However, no provision was made for interest to be paid in such cases or for the reimbursement of legal costs and expenses even though such processes would inevitably delay the point at which entitlement was settled and some additional costs would sometimes be involved. We would not therefore in normal circumstances pay any interest or meet any costs involved when a decision is overturned on appeal<sup>6</sup>.

There is, however, an exception to this general policy. Whenever Maladministration is accepted to have occurred, the general principle adopted is to provide redress which is fair and reasonable in the light of all the facts and circumstances of the case. On that basis, where the original decision was wholly unreasonable or clearly incorrect based on the evidence available at the time, it will be accepted that the overturning of the decision was in correction of Maladministration. In such cases there should have been no need to go through an appeals process and the delays involved should have been avoided. Where this applies a special payment will be considered for the delay in payment being made and any additional costs that were reasonably incurred in getting the matter corrected will be paid.

## 9.2. How is delay compensated

Compensation for delay is not considered if the amount of arrears of benefit<sup>7</sup> is less than £100. It is generally calculated as if it was an interest payment and, in line with HM Treasury guidance, calculated on the basis of simple interest. However, payment for delay will not be made where any compensation calculated is less than £10. In the vast majority of cases this approach provides reasonable compensation for loss of value or loss of use of the funds.

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<sup>6</sup> For purposes of this guidance Appeal refers to the AFC and War Pension appeal process and the AFPS Internal Disputes Resolution Process (IDRP).

<sup>7</sup> For purposes of this guidance benefit refers to all awards and allowances for AFCS, AFPS and War Pensions.

### 9.3. Calculating the special payment using 'simple interest'

In cases involving delay, the arrears are allocated to the tax years in which they accrued and interest is calculated, by applying the bank of England base rate, separately from the start of the arrears period and then for each subsequent tax year, to the date arrears were paid.

## 10. Extra statutory payments

### 10.1. Extra Statutory Payments for loss of statutory entitlement

Loss of statutory entitlement refers to instances where official error has led to a customer losing entitlement to a benefit that would have been received had the error not occurred or had the appropriate action been taken.

### 10.2. Financial disappointment rather than a loss of entitlement

Misdirection generally involves the provision of incorrect or inadequate information and can apply to any benefit or other service provided by the department. It may not lead to a loss of statutory entitlement but may lead to financial disappointment (see Ex Gratia).

Whilst considering the complaint, if it is identified that there has been an error or Maladministration which has led to a customer losing entitlement to a benefit, consideration must be given to if there is a way to provide the redress using statutory powers.

This means a special payment will not be payable where:

- existing powers can be used to review decisions and backdate benefit
- letters can be treated as claims and benefit paid on that basis
- a claim to one benefit can additionally/alternatively be treated as a claim to another benefit.

Such powers are there to be exercised and must be used before considering a special payment. However, even if a statutory solution is found, where an error has occurred, a special payment for compensation for delay may still be appropriate (see Delay).

### 10.3. What to pay

When it is established that error has occurred and the customer has suffered a loss of statutory entitlement, the payment made should be equal to the amount that the customer would have received had benefit been paid correctly. Any overpaid benefit should be deducted.

Simple Interest for the loss of use of the funds should be paid when the relevant criteria for compensation for delay are satisfied.

## 11. Actual financial loss

### 11.1. What can be treated as an actual financial loss?

Consideration of claims in respect of losses must be on their own merits and on a case by case basis. The emphasis should be on trying to restore a customer to the position that he or she would have been in had the error not occurred (or had they not proceeded on the basis of wrong advice). Any special payment made must not exceed the amount of benefit that was expected, plus compensation for sums actually spent in reliance on the wrong information.

## **11.2. Actual financial loss**

In most cases of actual financial loss, the amounts involved will be simple to both identify and verify, for example, bank charges incurred due to failure to make a timeous payment of benefit into a customer's bank or building society account. However, some categories of claim may be more complicated.

## **11.3. Evidence**

In considering the type and amount of evidence required to substantiate the claim, regard should be given to the nature and size of the expense involved. Where expenses are small then a reasonable estimate may be appropriate (for example, routine telephone calls, postage costs, and photocopying or travel costs). However, bank statements must be checked before making any payment in respect of bank charges. It is not necessary for the costs to have been incurred through dealing directly with the department. It is possible that they may have been incurred as a result of obtaining professional or similar advice, for example travelling to or from meetings with welfare rights advisors or solicitors, or contacting them by phone.

## **11.4. Financial disappointment**

Special payments are not generally made for financial disappointment. Financial disappointment may arise when a customer is advised that entitlement to benefit will be at a higher rate than the actual entitlement when a formal decision is made. Customer has altered his or her circumstances as a direct result of incorrect departmental advice. If a customer alters their circumstances to their financial detriment as a direct result of incorrect departmental advice, a legal view must be taken before a special payment can be considered for the resulting actual financial loss.

## **11.5. Matters to consider before making a payment where a customer has altered his or her circumstances as a result of incorrect departmental advice**

It is necessary to consider whether it was, in all the circumstances, reasonable for the customer to have accepted in good faith and to have acted upon, the incorrect information provided. Depending upon the circumstances, there are a number of options, including:

- to make continuing payments if, for example, the customer has taken on a regular financial commitment or
- to make a lump sum payment to clear any debt incurred as a result of such incorrect advice.

The circumstances of the case should be carefully examined to determine appropriate advice.

## **11.6. What is Actual Financial Loss?**

Actual financial loss applies to cases where Maladministration has directly caused the customer to incur additional expenditure that would not have been incurred otherwise, for example:

- pursuing justified complaints of Maladministration or compensation claims
- failure by the department to transfer funds timeously results in bank charges, for example, late payment into a bank or building society account (see section headed 'Bank charges/fees' for further details)
- Financial assistance provided to a customer, during a period when benefit has been delayed or interrupted. Expenses may also be incurred by a third party who provided financial assistance to a customer, during a period when benefit has been delayed or interrupted.

It must be determined whether Maladministration or official error led to the actual financial loss claimed.

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## **11.7. Letters, phone calls, faxes, fares and other travel costs**

When a complainant claims reasonable additional expenses in connection with the resolution of his or her complaint a special payment may be made to reimburse him or her for those additional costs. If however, for example, the customer's complaint was fully addressed but he or she continued to make unreasonable further representations a special payment would not be made for any further additional costs.

## **11.8. Bank charges / fees / interest on Credit Cards / Accrued mortgage interest**

When payment of benefit has been delayed due to departmental error, the customer may become overdrawn on a bank account, incur fees or use a credit card to secure funds. Alternatively the customer may have fallen behind with mortgage payments and the lender charges additional interest or other costs as a result. In such cases, the special payment should be equivalent to either:

- the interest payment calculated by the responsible officer for the delay or
- the amount of interest and any fee that is charged by the bank, credit card company or lender whichever is higher.

## **11.9. Professional fees – circumstances when they can be met**

The reimbursement of professional fees is only considered where Maladministration has occurred and the engagement of such help was justified in the pursuit of a claim to benefit. Each application for reimbursement of professional fees should be examined on its own merits and the decision should be made in the light of the circumstances of the case.

In assessing whether a special payment is appropriate, it should be established whether the matter would have been resolved within a reasonable time-scale, had the customer not sought professional assistance. If the answer is 'no', then payment should be made in respect of the cost of the fees incurred, providing such fees are reasonable. If the answer is 'yes', the criteria below should be applied to the case.

When deciding whether a special payment in respect of professional fees should be made, consideration should be given to:

- the circumstances which led to the engagement of professional services
- the complexity of the subject matter
- the experience of the customer in dealing with such matters
- the availability of official advice (or other sources such as through Citizens Advice Bureaux or advice under the Legal Aid scheme)
- whether the customer should have been aware, or should he or she have made themselves aware, of such advice.

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### **11.10. Failure to make timeous payments into bank/building society accounts**

Where a customer's pension is paid into a bank or building society account and the payment is not made timeously, or benefit is stopped or reduced and the customer is not notified, the customer may incur bank charges. It is important to establish that the delay resulted from a departmental error, before considering reimbursement of such charges. If departmental error did result in the bank charges, reimbursement of the charges by way of special payment should be considered, to place the customer in the position he or she would have been in had the error not occurred. Such payments should be considered in addition to any payment for compensation for delay (see delay for further details), as the payment for delay is for loss of use of funds, whereas the bank charges are an additional financial expense imposed by the customer's bank or building society.

### **11.11. Circumstances when a payment will not be made**

Where correct procedures have been followed, it would not normally be appropriate to make a special payment for the bank or building society charges incurred. It may be that such charges have been incurred for other reasons.

#### **Example;**

- The customer may not have given the department sufficient or reasonable period of time to act upon notice of a change of circumstances (for example, when requesting that payment of benefit be made into a new bank account).
- Payment may have been suspended correctly by the department (for example, the customer may have repeatedly failed to respond to correspondence or to supply information requested in connection with their claim to benefit).
- Bank charges may have been incurred because of a pre-existing overdraft. However, if further charges are incurred directly because of the department error, those further charges should be reimbursed.
- The customer may provide incorrect account details or may change their account details without notifying the department.

Care should be taken when considering whether a special payment is appropriate. Each case should be considered on its own merits.

### **11.12. Loss of income on interest bearing accounts**

This will be very much dependent on the circumstances of the case.

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## 12. Consolatory payments

### 12.1. Consolatory payments

A consolatory special payment may be considered in very exceptional circumstances, where Maladministration has had a direct adverse effect on the life of the customer or, much more exceptionally, on the life of another person, for example the customer's spouse or another family member.

The customer does not have to demonstrate that he or she suffered any financial loss and the special payment should be considered regardless of whether or not any other form of redress payment has been made. In very exceptional circumstances a consolatory payment may be appropriate.

A consolatory payment will not be appropriate if the actions of the department were reasonable and therefore do not constitute Maladministration, given:

- the circumstances of the case and
- the processes officials must necessarily undertake to establish or verify, benefit entitlement.

### 12.2. Gross inconvenience resulting from persistent error

A consolatory payment under this category is intended to cover situations where the errors made were so persistent and over such a protracted period of time as to cause the customer gross inconvenience in the pursuit of benefit or pursuing a justified complaint about departmental matters. It is not intended that a payment should be made for general inconvenience arising from normal dealings with the department even when errors occur. These payments are exceptional and are intended to cover the more serious cases.

Whilst reviewing the information that is held, the following consideration must be given:

- What to consider?
- What is gross inconvenience?
- Has there been persistent error? If so, how serious were the errors?
- How long have the errors persisted?
- In cases of delay, has there been contact from the customer?
- What is the impact of the error?
- The severity of impact?
- The severity of impact of the errors to level of their persistency?
- Has the customer contributed to the situation?
- How much should be paid?

Details of the considerative process are given below.

## **What is gross inconvenience?**

It is difficult to give examples of specific situations that would give rise to payment under this category. Each case should be considered on its own merits. However, as a guide, it would be expected that the customer would have experienced a combination of some of the following:

- very frequent and unnecessary disruptions to payments
- unwarranted repetitive requests for the same information
- repetitive loss of information
- excessive use of customer's time (where there is no actual financial loss - as this comes with its own separate category)
- gross mishandling of complaints (sometimes referred to as 'botheration').

This list is not exhaustive but the examples above are the most significant.

## **Has there been persistent error? If so, how serious were the errors?**

Whether errors can be regarded as persistent, depends upon the regularity of the errors and the individual circumstances of the case.

## **How long have the errors persisted?**

Whether the circumstances constitute persistent error may depend on the severity of the impact of the errors. Therefore, there is a need to look at the overall circumstances of the case before deciding whether the errors have persisted for a sufficiently long period to warrant consideration of a consolatory payment.

### **EXAMPLES;**

- Individual errors in 2006/2009/2012 might be regarded as regular but not persistent.
- Repeated delays in the receipt of the payment due to error over a period of two/three months might be regarded as persistent.
- Repeated failure to deal with correspondence fully.
- Cases may combine more than one issue such as benefit being frequently paid late and the complaint may not have been handled properly.

## **In cases of delay, has there been contact with the customer?**

If a customer makes regular contact to progress an issue and there is a failure to act upon that contact to progress the matter, the resulting delay may be considered as persistent error. Full regard should be given to the individual circumstances of each case when deciding if there has been persistent error.

## **What is the impact of the error?**

The impact of errors can differ in its severity. For example, failure to reply fully to a query may not have as severe an impact as the failure to make payment timeously.

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## **Taking into account the severity of impact when deciding on how much to award**

The severity of the impact should also be taken into account when deciding upon the scale of the award.

## **Relationship of severity of impact of the errors to level of their persistency**

When the impact of error on the life of the customer is of great severity, it is unnecessary for the period of error to have been prolonged or persistent before consolatory payment may be considered.

## **Has the customer contributed to the situation?**

There may be situations where a customer has contributed to the problems on a case by a lack of co-operation. Take this into account when assessing the size of the award.

## **What to pay**

If the circumstances of an individual case indicate that there has been persistent error it will be necessary to decide on the scale of the award. The factors to be considered are:

- the size of awards in similar cases (to ensure, as far as possible, equity of treatment)
- the persistence and longevity of errors (to recognise the effects on the particular case)
- the seriousness of the impact of the errors (to judge the case on its individual merits)

## **12.3. Gross embarrassment, humiliation or unnecessary personal intrusion**

This category of consolatory payment covers the situations where, through the action (or inaction) of the department a customer is unnecessarily placed in a position likely to cause gross personal embarrassment. This may have been caused either by error or failure on the part of the department or may have arisen through an unnecessary personal intrusion.

Whilst reviewing the information we hold, the following consideration must be given:

- What constitutes gross embarrassment?
- Has there been error?
- Has embarrassment been caused by error?
- How serious is the impact?
- What is the likely duration of the impact?
- Has the customer contributed to the situation?
- How much should be paid?

Details of the considerative process are given below.

## **What constitutes gross embarrassment?**

Gross embarrassment, humiliation or unnecessary personal intrusion is best illustrated through some examples as follows:

- wrongful arrest
- wilful misuse of information or position by officers of the department
- disclosure of sensitive information to a third party
- unnecessary gathering of personal information
- insensitive information gathering
- inappropriate methods of information gathering.

The above list is not exhaustive. Each claim made under this category will be considered on its own merits, taking into account the full circumstances and facts of the case.

## **Has there been error?**

As with any other category, before a special payment is appropriate, an error must have been made.

## **Has embarrassment been caused by error?**

It is necessary to look at the circumstances of the case to establish whether it is likely that embarrassment has been caused by the error(s). If not, another category of consolatory payment may be appropriate, such as for severe distress. Establish whether the case comes under one of the examples, see the section headed 'What constitutes gross embarrassment', thus causing humiliation or unnecessary personal intrusion. Remember that these examples are not exhaustive.

## **How serious is the impact?**

The amount of embarrassment caused can vary greatly according to the situation. For instance, it is likely that, in most cases, incorrect arrest and detention by the police would have a greater impact than disclosure of benefit information to a third party. Always consider the circumstances of the individual case.

## **What is the likely duration of the impact?**

Depending upon the circumstances of the individual case, the duration of the impact of an error can vary. An incident where the error is discovered, properly handled and corrected quickly would probably have an impact of a shorter duration than circumstances where highly personal information is disclosed to a third party that has long term contact with the customer.

## **Has the customer contributed to the situation?**

There may be instances where the customer has deliberately sought publicity as a result of an error. A decision on the special payment should be based upon the impact of the error rather than the impact of the publicity. There have also been instances of a customer deliberately informing another party of an error and then claiming that the error has caused embarrassment.

## **What to pay?**

The factors outlined above should be taken into account when deciding whether a special payment should be made and the amount of that payment. Payments made in similar cases should be considered when deciding on the amount.

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## **12.4. Severe distress which has significant impact on a customer's physical or mental health**

A payment for severe distress should be very exceptional and considered only when there has been a significant deterioration in a customer's physical or mental health as a direct result of Maladministration. In very rare cases, the severe distress may be experienced by another person, for example, a spouse or other family member, as well as, or rather than by, the customer.

Whilst reviewing the information we hold, the following consideration must be given:

- Has there been error?
- Has there been a serious impact upon health as a result of the error?
- Customer claiming to be upset, angry or distressed by an error is not sufficient
- Is there objective evidence of the impact?
- Cases where objective evidence may not be needed
- What is the degree of impact of the error?
- Are there factors, other than departmental error, affecting the customer's health?
- Is there a pre-existing health condition?
- What is the duration of the impact of the error upon the customer's health?
- How much should be paid?

Details of the considerative process are given below.

### **Has there been an error?**

As in any other claim for a special payment it has to be established that there has been official error.

### **Has there been a serious impact upon health as a result of the error?**

There has to be a direct link between the error made and the impact upon health. Bear in mind that there can be situations where the very involvement of the department can be a cause of stress. Such cases would not merit a special payment unless the stress is severe and can be directly linked with an error.

### **Customer claiming to be upset, angry or distressed by an error is not sufficient**

The fact that a customer may claim to be upset, angry or distressed by an error is not sufficient in itself to justify a special payment for severe distress. The impact must be serious.

## **Is there objective evidence of the impact?**

The customer should normally be asked to provide objective evidence of the impact of the error on their physical and/or mental health. This may take the form of a report from a GP or evidence from an employer that the customer has been unable to work as a direct result of health problems arising from an error. Please note that other forms of objective evidence can also be accepted.

## **Cases where objective evidence may not be needed**

In some circumstances it may not be necessary to obtain objective evidence. This will be where it is clearly self-evident that the error would have caused severe distress. Such cases should be few and far between. It will often be to the customer's advantage to obtain evidence of the impact in his or her case in order that any award can reflect the individual circumstances of the case.

## **What is the degree of impact of the error?**

An error will impact upon the health of different people to a different extent. For special payment purposes, it is the degree and duration of the impact that is normally more important than the scale of the error. The more serious the impact, the greater the payment to be considered, subject to the following paragraphs.

## **Are there factors, other than departmental error, affecting the customer's health?**

There will be cases where the objective evidence indicates that there have been other factors, such as personal problems, that have also affected the customer's health. It will be necessary to decide the relative importance of these other factors and the error when reaching a decision on the special payment.

## **Is there a pre-existing health condition?**

In many cases the customer may have a pre-existing health condition that has been affected by the error. This does not preclude consideration of payment. The error may have caused a delay in recovery from illness or worsened the condition. In such cases, it will be necessary to ascertain the extent to which the errors have affected the pre-existing condition when deciding whether a special payment is due and how much should be paid. In doing so the RO should ordinarily establish the state of the customer's health prior to the error, during the error and the likelihood of the customer's health improving following resolution of the error.

## **What is the duration of the impact of the error upon the customer's health?**

Once it has been established that there has been a serious impact upon health as a result of error, it is necessary to consider the duration of the impact when deciding on the scale of payment.

### **EXAMPLE;**

The same degree of impact that lasts for two years would warrant a higher payment than a case where the customer has recovered three months later.

## **What to pay?**

In deciding how much to award remember the following points:

- payment is only considered in exceptional cases
- take into account the range of payment available
- consider the degree of culpability of the department
- any pre-existing health conditions and scale and duration of the impact as described above.

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