

Public Service

mbudsman

Our guidance on financial remedy

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Financial remedy

We look into complaints where someone believes they have been negatively affected (experienced an injustice or hardship) because an organisation has not acted properly, or has given a poor service and not put things right.

Where we find this is the case we consider whether an organisation has already taken appropriate action to try to resolve the complaint. If we identify an organisation has not done so, we will usually make recommendations on how they can do this. This will not always include suggesting a financial payment is made.

How we decide what to recommend

In deciding what to recommend, we look to put the person affected back into a position where they would have been, had there not been a negative impact on them. If this is not possible, for example where the injustice is distress or unnecessary pain, we may suggest a financial payment to the complainant instead.

To assist us in considering an appropriate level of financial remedy, as well as casework policy and guidance, we use our severity of injustice scale (our scale). We also refer to previous cases where we have made similar recommendations. This is called our Typology of Injustice.

In determining an appropriate amount to recommend, we take into consideration financial amounts recommended or already paid by other organisations, awarded by courts, or paid following mediation before legal action.

Our scale

Our scale allows us to ensure the recommendations we make are consistent and transparent for everyone who uses our service.

The figures included in the scale represent the Ombudsman's judgement about the sort of sums that are both appropriate and proportionate for us to recommend.

We do not have standard amounts that we suggest for specific failings as these may impact the person affected differently in different circumstances. We consider the individual facts of a case in deciding what level of financial payment is appropriate to recommend.

The scale will be used for complaints where the person affected has asked for financial remedy and we consider it appropriate given the circumstances of the case. If someone is left out of pocket because of an organisation's actions (experiences a direct financial loss) we will recommend their expenses are reimbursed for the amount they have lost, including any interest due, instead.

The scale contains six different levels of injustice that a complaint could fall into, which increase in severity. Each level is then linked to a range of the financial amounts we would usually recommend in those circumstances.

We categorise injustice types by four main categories. These are emotional, material, physiological, and bereavement. These are then broken down into further subcategories. For example, distress under the emotional injustice category or minor pain under the physiological injustice one. The amounts we recommend will usually increase the more serious the injustice we find is. If the person affected does not want financial compensation we will not recommend it.

In applying the scale we will take into consideration the injustice the person affected says they have experienced. We will ultimately decide though where a complaint sits within the scale and what level of payment may be appropriate once we have formed our provisional views on the case.

The scale

Level	Remedy Amount	Description
1	£0	A case will generally be level one if we consider the person affected has experienced a low impact injustice such as annoyance, frustration, worry or inconvenience, typically arising from a single (one-off) incidence of maladministration or service failure, where the effect on the person complaining is of short duration, and where there are no other adverse effects or ongoing wider impact. We will usually consider an apology to be an appropriate remedy for these cases.
2	£120-£550	A level two injustice will typically arise when what has gone wrong has had a relatively low impact on the person affected. This will often result in a degree of distress, inconvenience or minor pain. This could also include instances where an injustice was more serious but only took place once, or was of short duration. In these cases we consider that an apology is not suitable by itself.
3	£600-£1,200	Level three cases would have a moderate impact on the person affected (for example, in terms of distress, worry or inconvenience). For a case to be level three, that impact would usually have been experienced over a significant period of time. A case may also be level three if the impact on the person affected was significant, but was only sustained for a short period of time.
4	£1,250-£3,700	A case at level four will involve the person affected experiencing a significant and/or lasting impact, so much so that to some extent it has affected their ability to live a relatively normal life. In these cases the injustice will go beyond distress or inconvenience, except where this has been for a very prolonged period of time.
5	£3,750-£12,450	Typically level five cases will be when the person affected has had a marked and damaging effect on their ability to live a relatively normal life. In these cases recovery is likely to take a significant amount of time.
6	£12,500 or more	Level six cases are the most serious we see, involving profound, devastating or irreversible impacts on the person affected. This includes circumstances where the individual may be affected permanently, or where recovery is likely to take several years, and cases involving an avoidable death. It would also cover circumstances where a reduced quality of life has been endured for a considerable period. This would include cases involving a significantly reduced life expectancy or injuries resulting in permanent disability or disfigurement.

Using the scale

When using the scale to work out an appropriate financial remedy we will:

- make sure we understand how the person complaining says they have been affected by what has happened; (we call this the claimed injustice)
- decide what parts of the claimed injustice were caused by what we have found has happened (the actual injustice we found as a result of our investigation) and how many times this occurred;
- identify the relevant injustice categories as listed in the scale;
- take a view on which of the six levels in the scale is appropriate, considering the overall level of injustice in the case;
- use the remedy range listed in the scale to help determine a suitable financial recommendation, using the Typology of Injustice (TOI) to help break this down further if appropriate.

Determining severity

When determining the severity level we will consider the following questions:

- What went wrong, (what were the failures) and how did it happen?
- How many episodes of failure were there?
- How long did the failures impact the person affected?
- What was the impact on the person affected? (see below)
- Is there an ongoing/long term impact on the person affected?
- How long is this likely to last?
- To what extent did these affect the person's ability to live a 'normal' life?
 - We take this to mean a person's ability to go about their life unhindered without the impact complained about taking over their life. For example; eating, sleeping, work, care or parenting responsibilities.
- Did they, or are they likely to make a full recovery? How long did, or will, this take?
- Were there any external factors, or aspects of the affected person's circumstances, that aggravated (or lessened) the impact? For example, a pre-diagnosed condition.
- Is the person affected particularly vulnerable, for example due to learning disabilities, mental or physical health or homelessness.

Determining impact

We consider the impact a complaint has had to be the immediate negative effect (the injustice) of the organisations actions or poor service (the failings) had on an affected person before taking into consideration other factors, such as their individual circumstances and the duration of the injustice.

Considering the level of impact a complaint has had on an affected person is key in deciding whether they have experienced an injustice and where their complaint fits within the scale. This is because while the failings or injustice in two complaints can be very similar, the affected person may have experienced them very differently. Minor failures will tend to have a smaller impact than major ones. Impact is related to the nature of the failings found and will vary from case to case. Some failings will also have secondary impacts which may not be immediately clear from the evidence we have.

Typology of injustice (TOI)

We store information about some of the financial recommendations we make on a spreadsheet we refer to as our TOI. This provides us with examples of specific amounts we have recommended on previous cases, alongside more detail about the case itself.

These examples were reviewed in 2017 and are used to support caseworkers in suggesting a suitable financial payment. They represent the sort of principles the Ombudsman considers should apply to investigations where financial remedy is appropriate. The examples will be added to and reviewed over time.

We may use the scale in conjunction with the TOI to cross-reference the amounts we have decided to recommend on previous cases to enable a view to be taken on consistency. We will not use the TOI on its own though, as we will often not have specific enough examples of previous cases to reach an accurate view on the amount to recommend.

Multiple injustice types

Where a complaint involves multiple injustice types we will identify how these affected the person complaining. This will usually not add to the overall severity of injustice, and determination of a financial recommendation will generally be made on the basis of the primary injustice type. For example in a case where someone has suffered both serious pain and worry we should refer to the relevant part in the scale for serious pain.

There will be some cases where the presence of additional injustice types may mean a case would come higher in our scale. For example, witnessing the suffering of a relative before their death is an additional injustice to experiencing the bereavement from the loss itself. Similarly the impact of poor complaint handling will often indicate a greater impact than when there was no issue raised about poor service during the handling of the complaint.

Where there is more than one episode of failings and each episode results in a separate injustice we should consider how this affects impact and duration. In particular we should be aware that a series of small injustices may together have a significant impact.

Determining severity when not all of the complaint is upheld

Where we find that not all of the injustice claimed by the person affected flows from the failings we have found or we only uphold limited aspects of a complaint, it can be difficult to determine the severity of the injustice. This is because we are trying to estimate the impact the failing would have had on the person affected, rather than starting with the injustice they have claimed.

In these circumstances we will need to consider what a 'reasonable' injustice for the complaint may be. In these circumstances we will consider what evidence of injustice is available and determine the extent to which this flowed from the upheld aspects of the complaint. We need to be aware though that some aspects of the claimed injustice may relate to complaint areas where we have found no failings. We therefore need to exercise very careful judgement to ensure we are being fair to both the person affected and the organisation complained about.

Annex A: Severity levels by typology category

The following table sets out in more detail how the severity of injustice levels operate within each of the main TOI injustice categories (emotional, material, physiological and bereavement).

Level 1 (Financial remedy not appropriate)

These will usually be injustices such as annoyance, frustration, worry or inconvenience, typically arising from a single (one-off) incidence of maladministration or service failure, where the effect on the individual is of short duration, and where there are no other adverse effects or ongoing wider impact. Assuming that there are no issues of vulnerability, that the person affected is an adult of reasonable physical and mental health, and there are no external factors to exacerbate the injustice, we would expect them to recover from the injustice very quickly once the direct impact of the poor service comes to an end. We would generally consider an apology to be an appropriate remedy for level 1 injustice.

Emotional	Distress, worry, annoyance and similar emotional impacts, injustice of the sort which a healthy adult would be expected to deal with on a regular basis, without external support, and which does not impact on the affected person's day to day functioning, or their ability to live a normal life; for a period of up to 2 weeks. One-off clinical or administrative failures causing minor worry or annoyance.
Material	Inconvenience or hardship lasting no more than a few days, for example one-off cancellation of appointments or hearings as long as these are rearranged within a reasonable time; short-term deprivation of money; small financial losses (compensated separately) or losses of opportunity; delays that have no material impact. Inconvenience that does not intrude on working time, for example having to bring a complaint to the Ombudsman.
Physiological	Short term minor pain (no more than 1-2 days), which can be managed by use of non-prescription medication and where the person affected can still function normally.
Bereavement ¹	Level 1 injustice will only exceptionally be relevant in cases that involve bereavement. We will generally find that any injustice involving bereavement made worse by poor service merits compensation. Exceptionally this may be applicable for some cases involving very minor handling or communication failings that had little impact on the person affected.

Case examples

- A GP failed to warn a complainant that they faced removal from their practice list, but we agreed with the practice that the relationship had broken down.
- An organisation failed to notify a complainant that a Judge had decided a hearing should not go ahead. The person affected only found out when they arrived in court.

¹There are five TOI bereavement types: B1: Bereavement arising from avoidable death;

B2: Bereavement where survival chances were compromised or where there was a loss of opportunity to provide treatment that may have prevented or delayed death;

B3: Bereavement where the impact of death was exacerbated by poor standards of care or treatment, where there is no evidence that service failure was a contributory cause of the death;

B4: Bereavement where opportunity was lost to properly prepare for death or to be with the deceased at time of death; or where the deceased person's family were excluded from decisions about care and treatment;

B5: Bereavement exacerbated by poor complaint handling or by failure to provide explanations about the circumstances of a death.

Level 2 (£120 - £550)

These are cases which will generally be similar to, but more serious than cases involving level 1 injustice, but where we consider that an apology on its own is not an adequate remedy. Typically the injustice will arise from a relatively low impact failing, often resulting in a degree of distress, inconvenience or minor pain, but the duration of the injustice will tend to be longer than in cases with level 1 injustice. Alternatively level 2 may involve single instances of more serious injustices where the impact was of short duration. We would expect the person affected to recover quickly once the poor service had ceased. Level 2 injustice will not usually have a significant lasting impact, or any effect on the complainant's ability to live a relatively normal life.

Emotional	Distress, worry, annoyance and similar injustice of the sort which a healthy adult would be expected to deal with on a regular basis, without external support, and which does not impact on the affected person's day to day functioning, or their ability to live a normal life; for a period from 1-2 weeks to about six months. We would reasonably expect any impact to diminish completely in the fullness of time. Shorter periods of more serious distress.
Material	Instances of poor complaint handling where there is a delay of more than a few weeks, up to around one year (or longer if we find that there was no substance to the complaint); Delay in determination of an overseas immigration application of up to a year; cases involving short periods of financial or other hardship - up to a month; inconvenience which has more than a short-term or one off impact, for example when a failing by a GP practice meant the person affected now has to travel to a practice which is significantly further away; or where the person affected has to repeatedly chase the organisation to carry out an action; or which impacts on working time or requires the person affected to waste holiday time.
Physiological	Minor pain lasting from a few days to a month; severe pain lasting for no more than a week. Loss of opportunity for a better clinical outcome in cases involving less serious illnesses or the outcomes of minor injuries.
Bereavement	B3 cases involving relatively minor failings which did not cause significant pain or suffering to the deceased, or distress to the person affected or other family members at the time; B4 cases involving minor failures in communication which caused a small degree of distress or worry against a background of bereavement (or serious illness if the failures preceded the patient's death). B5 cases involving delays of up to six months in responding to a complaint, or provision of a response which does not resolve the complaint.

Case examples

- Prisoner placed on reduced privileges due to prison error.
- A GP administered injections to a complainant in their feet rather than their arm. This did not make their condition worse but did delay them in being treated appropriately.

Level 3 (£600 - £1,200)

This would include cases where the injustice would have a moderate impact (for example, in terms of distress, worry, inconvenience) but has lasted for significant period of time; it may also involve cases where a higher impact injustice has been suffered for a short period. The failings may impact to some extent on the affected person's ability to live a relatively normal life, for example due to stress, impaired sleep, or high levels of inconvenience or uncertainty. However once the situation has ceased, the person affected would be expected to recover quickly.

Emotional	Distress, upset or worry lasting 6-12 months. Significant distress (that is, distress which results in a degree of functional impairment ²) lasting from a few weeks to three months (or shorter periods where the symptoms are greater). Single traumatic or highly distressing experiences where there was no other significant adverse impact. Significant embarrassment or humiliation.
Material	Very poor complaint handling; e.g. delays of over a year; or with delays of over six months combined with qualitative failures such as provision of incorrect or incomplete responses. Delay of over a year in overseas immigration cases resulting in material uncertainty; Financial or other hardship lasting three to six months.
Physiological	Minor pain lasting up to about three months; severe pain up to a month. Losses of opportunity for a better clinical outcome in cases not involving terminal, life threatening or seriously debilitating illness.
Bereavement	B2 cases where we accept that it was unlikely that the patient would have survived, but where a remote chance of survival was lost. (Most B2 injustices will be at least level 4). B3 cases where there were failures in care which caused moderate distress or discomfort to the patient, and/or which added to the family's bereavement after the patient's death. B4 cases where poor communications with the patient's family resulted in significant worry or distress. B5 cases with very poor complaint handling.

Case examples

- An organisations mishandling of a third party debt order meant the complainant missed the opportunity to pursue the debt.
- Delays by a hospital in making appropriate referrals and performing tests meant the affected person's bladder cancer was diagnosed five months after the appropriate target. This did not affect the outcome of the person affected but caused significant anxiety.

² Significant distress will usually involve one or more of the following:

- Clinical stress – i.e. consulting a doctor for stress that was not there previously
- Sleeplessness or irritability
- Poor performance at work
- Increased drug use/alcohol consumption

Level 4 (£1,250 - £3,700)

This level includes cases that have a significant and/or lasting impact on the person affected, such that it affects their ability to live a relatively normal life to some extent. Generally the injustice will go beyond 'ordinary' distress or inconvenience, except in cases where it is very prolonged; the injustice will often be such that, even after the poor service ends, the failure could be expected to have some lasting impact on the person affected. The matter may 'take over' the affected person's life to some extent.

Emotional	Distress lasting over 12 months. Significant distress, lasting over three months, or which is ongoing. Less serious trauma cases.
Material	This would include financial or other significant hardship or other adverse impact on quality of life, lasting in excess of six months. Including delays in handling overseas immigration or other applications in excess of two years; exceptionally poor complaint handling extending over several years, or involving repeated dishonest or disingenuous responses which deliberately seek to evade responsibility ³ .
Physiological	Minor ⁴ pain (P1) lasting for three months to a year; severe pain (P2) for one to three months. Loss of opportunity for better clinical outcome in cases of moderately serious illness where there is no reduction in life expectancy.
Bereavement	B2 cases where there was a small but tangible possibility that the person affected would have survived, which was compromised. B3 cases where the affected person's suffering was prolonged or where the failures in care were particularly serious, causing significant distress to the person's family. B4 cases where poor communication had a significant impact on the surviving family's last memories of the person affected. B5 cases where the complaint handling was particularly poor, impacting on the family's ability to find closure.

Case examples

- The actions of an organisation led to a defendant who threatened a family being acquitted. We could not say the outcome would have been different but the uncertainty of not knowing was an injustice in itself.
- A terminally ill man's final days were not properly planned and were more distressing than they should have been. A lack of proper nutrition, hydration and clinical input meant he was not give the best chance of surviving for longer.

³ Only the very worst complaint handling cases will result in a level 4 injustice; financial remedy will usually be towards the lower end of the range.

⁴ Minor pain may eventually cease to be 'minor' if it continues for an extended period.

Level 5 (£3,750 - £12,450)

Typically these will have a marked and lasting detrimental effect on the person affected and their ability to live a relatively normal life. Recovery will take significant amounts of time. Level 5 injustices will not usually include cases where the primary injustice is emotional, except where this has been particularly traumatic or is prolonged and ongoing; most cases will also involve significant material or health injustices or bereavement.

Emotional	More serious trauma cases; cases with extended severe distress/worry, lasting over several years, or which is ongoing and where there is no prospect of relief in the near term.
Material	Prolonged financial hardship lasting several years (for example long-term child support cases). Significant and long term negative impact on the affected person's quality of life, for example permanent loss of mobility or independence; Loss of significant financial opportunities or life chances, for example the loss of opportunity to go to university, or to develop a career, where we cannot say on balance that these opportunities would have been taken up.
Physiological	Cases involving long-term pain or illness. Minor pain lasting for an extended period (over a year) or which is ongoing and there is no prospect of relief in the near term. Severe pain lasting more than three months. Permanent minor disability; cases where major surgery could have been avoided or was unnecessary; cases where the affected person's prognosis or life expectancy is worsened.
Bereavement	B2 cases where there was a missed fair ⁵ chance of survival or where we consider that poor service was a significant contributory factor in the death; or where there was only a small chance of survival but where the patient's suffering was extended. B3: Unlikely to be applicable except where there was exceptional suffering and distress. B4 and B5: Unlikely to be applicable where these are the primary injustice

Case examples

- Mishandling of an asylum application left the person affected without access to public funds or associated benefits for an extended period causing financial worries and distress.
- Incomplete investigations prior to hip surgery, inadequate consent and record keeping led to the complainant experiencing the pain discomfort and distress of a hip replacement that was unneeded.

⁵ These will be cases where the chance of survival was approaching 50% but where we still cannot find on balance of probabilities that death was avoidable.

Level 6 (£12,500 or more)

These are the most serious cases seen by the Ombudsman; involving devastating or irreversible injustice, such that the person affected will be affected permanently, or where recovery is likely to take several years, or where a reduced quality of life has been endured for a considerable period. Typical examples include avoidable death and injuries resulting in permanent disability or disfigurement.

Emotional	Very severe trauma (which may be accompanied by mental ill health or mental/social disability); severe distress over an extended period (generally several years)
Material	Hardship, over an extended period (5 years or more); significant and sustained deterioration in quality of life (e.g. unwanted pregnancy and birth); loss of a major life chance which we can say on balance of probabilities would have happened e.g. the chance to attend university, start a new life in a different country, or pursue a chosen career ⁶
Physiological	Long-lasting, untreatable pain; very serious injury; loss of or damage to a significant aspect of the body; permanent major disability; Seriously curtailed life expectancy; loss of opportunity to prevent illness becoming terminal and where death is expected in the near future.
Bereavement	B1: All avoidable deaths; B2: Deaths which were not avoidable but where there was a loss of a fair chance of survival which is exacerbated by other factors; for example extensive suffering B3: Unlikely to be applicable. B4 and B5: Unlikely to be applicable where these are the primary injustice

Case examples

- Three planning appeal decisions in one case were mishandled and subsequently quashed, leading to the person affected being unable to properly plan and run their business for a substantial period of time.
- The person affected died of sepsis due to a failure of a hospital to carry out appropriate and thorough investigations of their symptoms. It is highly probable the person would have survived had treatment been prescribed quicker.

⁶ Note the distinction between situations in which we can say on balance that these outcomes would have transpired (level 6), and those where we can only say that there was a loss of opportunity (level 4/5).

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