

A closer look - providing a remedy

1. Introduction

- 1.1 This is part of a series of guidance modules that will help you implement and deliver the expectations in the [UK Central Government \(UKCG\) Complaint Standards](#).
- 1.2 This module sets out how to identify and provide an appropriate remedy when something has gone wrong. It will also help you make consistent decisions. It explains how to:
 - establish the impact of any failings you have found
 - provide an appropriate remedy to put things right
 - make a meaningful apology.
- 1.3 You should read this guide alongside:
 - Early resolution
 - A closer look - clarifying the complaint and explaining the process
 - A closer look - carrying out the investigation
 - A closer look - writing and communicating your final written response
 - Referring people to the Ombudsman

The guidance modules are available on the [Ombudsman's website](#).

2. The Complaint Standards, national guidance and relevant legislation

2.1 The relevant Complaint Standards are:

Welcoming complaints in a positive way

- Organisations make sure colleagues can identify when issues raised in a complaint should be addressed (or are being addressed) via another route at the earliest opportunity, so a co-ordinated approach can be taken. Other possible routes include appeals, reference or statutory review by a tribunal or action in a court of law or disciplinary process. Colleagues know when and how to seek guidance and support from colleagues and are able to provide service users with information on where they can get support.

Giving fair and accountable responses

- Wherever possible, colleagues explain why things went wrong and identify suitable ways to put things right for service users. Colleagues make sure the apologies and explanations they give are meaningful and sincere, and openly reflect the impact on the individual or individuals concerned.
- Organisations empower colleagues to identify suitable and appropriate ways to put things right for service users who raise a complaint. Organisations provide guidance and resources to make sure any proposed action to put things right is consistent.

2.2 The Complaint Standards work alongside several other important requirements and guidance including:

- A Modern Civil Service
- The Civil Service code
- The Seven Principles of Public Life (the Nolan Principles)
- Managing Public Money
- the Public Value Framework
- Delivering better outcomes for citizens
- the Corporate governance code for central government departments.

2.3 Relevant statutory and national guidance

Managing Public Money says:

‘2.3.4 There is an important category of expenditure commitments for which the Treasury cannot delegate responsibility. It is transactions which set precedents, are novel, contentious or could cause repercussions elsewhere in the public sector. ... Treasury consent to such transactions should always be obtained before proceeding, even if the amounts in question lie within delegated limits. Examples include ... ephemeral ex gratia payment schemes, eg payments to compensate for official error.

‘4.11.4 Where public sector organisations fail to meet their standards, or where they fall short of reasonable behaviour, it may be appropriate to consider offering remedies. These can take a variety of forms, including apologies, restitution (eg supplying a missing licence) or, in more serious cases, financial payments. Decisions about financial remedies - which should not be offered routinely - should include taking account of the legal rights of the other party or parties and the impact on the organisation’s future business. 4.11.5 Any such payments, whether statutory or ex gratia, should follow good practice (see section 4.13). Since schemes of financial redress often set precedents or have implications elsewhere, they should be cleared with the Treasury before commitments are made, just as with any other public expenditure out of the normal pattern (see sections 2.1 to 2.4).’

Managing Public Money Annex 4.14 - Remedy says:

‘A4.14.1 .. Where groups of complaints raise common issues, the remedies offered should be fair, consistent and proportionate.

‘A4.14.3 Public sector organisations should seek to learn from their complaints. If an internal or external review, or a PHSO investigation, shows there are systemic faults, defective systems or procedures should be overhauled and corrected.

‘A4.14.4 As section 4.11 explains, when public sector organisations have caused injustice or hardship because of maladministration or service failure, they should consider: 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, and whether policies and procedures need change, to prevent the failure reoccurring.

‘A4.14.5 The remedies available. Remedies 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 eg one off or as part of a structured settlement.

‘A4.14.6 Financial remedies for individual cases are normally ex gratia payments. Where a pattern develops, and a number of cases raising similar points need to be dealt with, it may make sense to develop an extra statutory scheme (see annex 4.13). If any such scheme seems likely to persist, the organisation concerned should consider whether to bring forward legislation to set it on a statutory footing (see sections 2.5 and 2.6).

‘A4.14.7 The normal approach to complaints where no financial payment is called for is to offer an apology and an explanation. This may be a sufficient and appropriate response in itself. People complaining may also want reassurance that mistakes will not be repeated.’

Part 1, Section 2 of the **Compensation Act 2006** says:

‘An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty’. This section of the Act applies to England and Wales only.

‘Handling of Parliamentary Ombudsman Cases’ published by the Cabinet Office, says:

‘In keeping with UK Central Government Complaint Standards, where mistakes have been made, the priority of the organisation should be to avoid a “blame culture” (where staff feel threatened by complaints and defensive about receiving them). Guidance should instead encourage the ready admission of mistakes, the provision of swift and effective redress and steps to ensure that a similar failure does not recur.’

3. What you should do

3.1 When you ask service users what they want to achieve by raising a complaint, most say they:

- want an apology
- want things to be put right
- want to understand what happened
- do not want what happened to them (or a loved one) to happen to anyone else.

A meaningful apology and explanation is more likely to resolve a complaint early than any other action you might take.

3.2 At the start of an investigation it is important to understand the impact of events and what outcome the service user is looking for. You should bear this in mind when identifying the best way to put things right, treating each person fairly and as an individual. For more information, see ‘Clarifying the complaint’.

3.3 When providing a remedy, you are not only aiming to put things right for the service user or people concerned. You should also think about any wider learning for your organisation so that you can help improve services for everyone.

Establishing and understanding the impact of any failings

3.4 When you have identified that something has gone wrong, you need to determine what impact that failing has had on the service user so you are clear about what you are putting right with your remedy. This should include thinking about whether the failings you have found could affect other service users, or services your organisation provides, in the future.

3.5 By this stage, you will already have spoken to the service user about the impact they say any failings have had on them. You need to take this into consideration when thinking about a suitable remedy. Remember, you can go back and discuss this in more detail with them at any point during your investigation if you need to - particularly if the failings you have found are not quite those that were first complained about.

- 3.6 You should look at any failings you have found and consider what would have been different if they had not happened. For example:
- did a delay in making a decision, or an error in the decision-making process, have a negative impact in some way?
 - did a failure or delay in service provision cause the person to suffer in any way?
 - did a failure to explain what was happening cause unnecessary anxiety and frustration?
- 3.7 You should consider the impact on the service user of having to take the time and trouble to complain. You should also consider whether any unreasonable delays in responding to the complaint have worsened the distress or frustration they have experienced. If they have, you should take that impact into account when you decide on a remedy.
- 3.8 When you think about impact, it may be helpful to think about the following categories:
- inconvenience and distress - possibly caused by:
 - cancellations
 - failures or delays in service provision or decisionmaking
 - failures in communication
 - unreasonably prolonged complaint handling.
 - being denied an opportunity - for example, being denied the opportunity to make an informed choice or a claim because the service user was not given the full facts
 - physiological injustice - For example, an impact on physical or mental health
 - bereavement - such as where a poor standard of service caused someone's death
 - loss through actual costs incurred - for example, loss of benefits
 - other financial loss - for example, loss of a financial or physical asset, reduction in an asset's value, or loss of financial opportunity.

Considering financial or other redress and possible legal claims

- 3.9 If you identify what may be a serious failing or impact, you will need to consider whether the person might have a potential legal claim. The complaints process is not designed to determine legal responsibility, negligence or breach of statutory duty, or to provide compensation that a court might award.
- 3.10 Where you have identified that someone might have a potential legal claim, you should discuss this with relevant colleagues. You should inform the person making the complaint and tell them about the availability of independent advice from solicitors specialising in the relevant field.

Putting things right - the remedy

- 3.11 If the failings you have identified have had an impact of any kind, you should first provide a meaningful apology (see below) and then, where possible, put things right for the service users directly affected. The remedy should aim to return anyone affected to the position they would have been in if the failing had not happened. If this is not possible, any remedy should compensate them appropriately. Where appropriate, you should also offer remedies to others who have suffered an impact as a result of the failing or poor service.
- 3.12 Remedies can include:
- a **meaningful apology**, an explanation and accepting responsibility
 - **remedial action**, which may include any combination of things like:
 - correcting an error
 - reviewing or changing a decision or the service given to an individual
 - speeding up an action
 - waiving (or reimbursing) a fee or penalty
 - issuing a payment or refund
 - revising published material
 - revising policies and procedures to stop the same thing happening again
 - training or supervising colleagues.
 - **financial compensation** for direct or indirect financial loss, loss of opportunity, inconvenience, distress, or any combination of these.
- 3.13 The remedy you offer should take into account the outcomes you discussed at the start of the complaint. In most cases, the service user making the complaint will want an individual remedy to put things right and to recognise the impact of the failing on them. This could include apologising, acknowledging the error, and providing reassurance that you have taken or will take, action to make sure the same mistakes don't happen to others.
- 3.14 When you share your initial views with the service user who made the complaint, you should discuss your proposed remedy with them (see 'carrying out the investigation'). This will help them understand what action you have taken (or will take) as a result of their complaint, and that they have an opportunity to comment on this before you reach a final view.
- 3.15 When you decide that a financial remedy is appropriate, such as an ex-gratia payment, you should follow relevant organisational policies and procedures and Treasury guidance to approve the payment. You should also make any payment within a reasonable timescale.

Complaints involving issues that may result in disciplinary procedures

- 3.16 The complaints procedure itself is not a disciplinary procedure. While considering or investigating the complaint, you may identify issues where a colleague is subject to remedial or disciplinary procedures. If that happens, you will need to discuss this with relevant colleagues. You should use your HR policy as a guide to inform your actions and how much information, if any, you are allowed to share with the service user. See guidance on 'complaints and other processes'.

Demonstrating that lessons have been learnt

- 3.17 Whenever possible, you should offer to involve the service user in any action you take to improve services as a result of their complaint. This will help them see that your organisation has listened and learnt from their complaint. This could involve sharing drafts of any changes to policies and procedures, sharing the outline and objectives of any training sessions and even involving them in that training if appropriate. These actions will help them see that speaking up and making their complaint was worthwhile and has resulted in positive change for your organisation and the people who use your services.
- 3.18 It is always good practice to tell the service user about action you have taken to improve services as a result of their complaint. You may also want to show learning by commenting on the wider actions arising from complaints in your annual report or on your website. See guidance on reporting and insight.

Making a meaningful apology

- 3.19 Saying sorry is always the right thing to do when something has gone wrong. It is not an admission of legal responsibility.
- 3.20 Apologising when things go wrong should be straightforward. But, even for the most experienced person, it can be filled with difficulties and emotion. It is best to give an apology at the earliest opportunity, as soon as you know that something has gone wrong. It should show sincere regret that something has gone wrong. Where possible, you should say sorry in person and involve the right senior leader. At the same time as you apologise, you should explain what you know so far and what you are doing to find out more.

3.21 One technique is to use the three Rs:

- **Regret** - say sorry and accept responsibility for the mistake and the impact it has had on the person.
- **Reason** - provide a reason for the mistake. This may simply be what you know so far. If there is no valid explanation, be open and honest and say there is no excuse for the action or behaviour.
- **Remedy** - say what you will do to find out more or how you will put things right. Provide assurance that the mistake will not be repeated.

3.22 While it is best to apologise soon after the failing has happened, it is never too late to apologise. You should always include an apology in your final written response if something has gone wrong. You may also want to have a separate phone call or meeting with the service user so you can apologise in person.

4. Examples and case studies

4.1 The dos and don'ts of making a meaningful apology

- **Don't say**
 - × I'm sorry you feel like that
 - × We're sorry if you're offended
 - × I'm sorry you took it that way
 - × We're sorry, but...
- **Do say**
 - ✓ I'm sorry X happened
 - ✓ We're truly sorry for the distress caused
 - ✓ We apologise unreservedly for the distress this has caused you and your family

5. Practical tools

5.1 [The Ombudsman's Principles for Remedy](#)

5.2 [The Ombudsman's guidance on financial remedy](#)

5.3 [Scottish Public Services Ombudsman guidance on apologies](#)

5.4 [The Ombudsman's action plan guidance and template](#)

6. Version control

6.1 Final - November 2022