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ANNEX 4.14 COMPLAINTS AND REMEDY

Prompt and efficient complaint handling is an important way of ensuring customers receive the service to which they are entitled and may save public sector organisations time and money by preventing a complaint escalating unnecessarily.

If their services have been found deficient, public sector organisations should consider whether to provide remedies to people or firms who complain. This is separate from administering statutory rights or other legal obligations, eg to make payments to compensate. Remedies may take several different forms and should be proportionate and appropriate.

Dealing with complaints

A4.14.1 Public sector organisations should operate clear accessible complaints procedures. They are a valuable source of feedback which can help shed light on the quality of service provided, and in particular how well it matches up to policy intentions. So all complaints should be investigated. The Parliamentary and Health Service Ombudsman (PHSO) has published Principles of Good complaint Handling to help public bodies when dealing with complaints (see paragraph A.4.14.18).

A4.14.2 Systems for dealing with complaints should operate promptly and consistently. Those making complaints should be told how quickly their complaints can be processed. 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 what their complaints reveal. If an internal or external review, or a PHSO investigation, shows there are systemic faults, defective systems or procedures should be overhauled and corrected.

Remedies

A4.14.4 As section 4.12 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 their policies and procedures need change, to prevent the failure reoccurring.

The remedies available

A4.14.5 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.

A.4.14.6 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 2.3 and 2.4).

Designing remedies

A.4.14.7 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.

A.4.14.8 It may be more difficult to judge whether financial compensation is called for, and if so how much, especially if there is no measurable financial detriment. Great care should be taken in designing financial compensation schemes since they may set expensive precedents.

A.4.14.9 Where financial remedies are identified as the right approach to service failure, they should be fair, reasonable and proportionate to the damage suffered by those complaining. Financial remedies should not, however, allow recipients to gain a financial advantage compared to what would have happened with no service failure.

A.4.14.10 Public sector organisations deciding on financial remedies should take into account all the relevant factors. Some which are often worth considering are outlined in box A.4.14A. The list may not be exhaustive.

box A4.14A factors to consider in deciding financial compensation

- Whether a loss has been caused by failure to pay an entitlement, eg to a grant or benefit.
- Whether someone has faced any additional costs as a result of the action or inaction of a public sector organisation, eg because of delay.
- Whether the process of making the complaint has imposed costs on the person complaining, eg lost earnings or costs of pursuing the complaint.
- The circumstances of the person complaining, eg whether the action or inaction of the public sector organisation has caused knock on effects or hardship.
- Whether the damage is likely to persist for some time.
- Whether any financial remedy would be taxable when paid to the person complaining.

A.4.14.11 If a compensation payment includes an element because the person complaining has had to wait for their award, it should be calculated as simple interest. The interest rate to be applied should be appropriate to the circumstances and defensible against the facts. Some rates worth considering are the rate HMRC pays on tax repayments and the rate used in court settlements.

A.4.14.12 When a public sector organisation recognises that it needs a scheme for a set of similar or connected claims after maladministration or service failure, it should ensure that the arrangements chosen deal with all potential claimants equitably. It is important that such schemes take into account the Ombudsman's Principles of Good Administration (see annex 4.3). They must be well designed since costs can escalate if a problem turns out to be more extensive than initially expected.

A4.14.13 If those seeking compensation have suffered injustice or hardship in a way which is likely to persist, it may not be appropriate to pay compensation as a lump sum. Instead it may make sense to award a structured settlement with periodic (eg monthly or annual) payments. Public sector organisations considering such settlements should seek both legal and actuarial advice in drawing them up.

A4.14.14 Essentially, designing a compensation scheme is no different from designing other services. Good management, efficiency, effectiveness and value for money are key goals. The checklist in box 4.7 is therefore a sound general guide. Some specific issues which may require special care for compensation schemes are outlined in box A.4.14.B.

box A.4.14b issues to consider in designing compensation schemes

- Clarify the coverage of the scheme.
- Set clear scheme rules, with supporting guidance, to implement the policy intention.
- Make the remedies fair and proportionate, avoiding bias, discrimination or prejudice.
- Ensure the scheme's systems work, eg through pilot testing.
- Design in sufficient flexibility to cope with the characteristics of the claimant population.
- Check that the administration cost is not excessive – or simplify the scheme.
- If the scheme sets a precedent, make sure that it is acceptable generally.
- Inform Parliament appropriately, eg through a written statement and/or in the resource accounts.
- Plan to evaluate the scheme at suitable point(s).
- Provide for closure of the scheme, unless there is good reason not to.

Consulting the Treasury

A4.14.15 When considering making individual remedy payments, departments need to consult the Treasury (and sponsored bodies need to consult their sponsor departments) about cases which:

- fall outside their delegated authorities; or
- raise novel or contentious issues; or
- could set a potentially expensive precedent or cause repercussions for other public sector organisations.

A4.14.16 Public sector organisations developing schemes to pay remedies should consult the Treasury before finalising them. Proposed schemes drawn up in response to a PHSO recommendation also require Cabinet Office approval. Once a scheme is agreed, it is only necessary to consult the Treasury further about cases outside the agreed boundaries for the scheme, or the delegated authority applying to it.

Reporting ex gratia payments

A4.14.17 Departments should ensure that ex gratia payments have Estimate cover, and that the ambit of the vote concerned is wide enough for the purpose. Ex gratia payments score as special

payments in departments' resource accounts. Departments and agencies should include summary information on compensation payments arising from maladministration in their annual reports.

The PHSO's principles

A.4.14.18 The PHSO has published Principles of Good Complaint Handling to help public bodies when dealing with complaints (box A.4.14c); and Principles for Remedy for use in deciding cases (box A.4.14d). These are of wider application. Fuller details are available at www.ombudsman.org.uk complaints; and www.ombudsman.org.uk/improving_services/remedy/index.html)

box A.4.14c: The PHSO's Principles of Good Complaint Handling

Good complaint handling by a public body means:

1. Getting it right

- Acting in accordance with the law and relevant guidance, and with due regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure clearly in the right way and at the right time.

2. Being customer focused

- Having simple and clear procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including, co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

3. Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

4. Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions and actions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

6. Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying them to produce reasonable, fair, and proportionate results in all the circumstances of the case. The Ombudsman will adopt a similar approach when considering the standard of complaint handling by public bodies in her jurisdiction..

box A.4.14d: The PHSO's Principles for Remedy

Good practice with regard to remedies means:

1. Getting it right

- Quickly acknowledging and putting right cases of maladministration or poor service that have led to injustice or hardship.
- Considering all relevant factors when deciding the appropriate remedy, ensuring fairness for the complainant and, where appropriate, for others who have suffered injustice or hardship as a result of the same maladministration or poor service.

2. Being customer focused

- Apologising for and explaining the maladministration or poor service.
- Understanding and managing people's expectations and needs.
- Dealing with people professionally and sensitively.
- Providing remedies that take account of people's individual circumstances.

3. Being open and accountable

- Being open and clear about how public bodies decide remedies.
- Operating a proper system of accountability and delegation in providing remedies.
- Keeping a clear record of what public bodies have decided on remedies and why.

4. Acting fairly and proportionately

- Offering remedies that are fair and proportionate to the complainant's injustice or hardship.
- Providing remedies to others who have suffered injustice or hardship as a result of the same maladministration or poor service, where appropriate
- Treating people without bias, unlawful discrimination or prejudice.

5. Putting things right

- If possible returning the complainant and, where appropriate, others who have suffered similar injustice or hardship, to the position they would have been in if the maladministration or poor service had not occurred.
- If that is not possible, compensating the complainant and such others appropriately.
- Considering fully and seriously all forms of remedy (such as an apology, an explanation, remedial action, or financial compensation).
- Providing the appropriate remedy in each case

6. Seeking continuous improvement

- Using the lessons learned from complaints to ensure that maladministration or poor service is not repeated.
- Recording and using information on the outcome of complaints to improve services.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying the Principles to produce reasonable, fair, and proportionate remedies in all the circumstances. The Ombudsman will adopt a similar approach in recommending remedies.