



The Commission for
Local Administration in England



Remedies **Guidance on good practice 6**



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Introduction

This guidance note sets out the guidelines we use when considering remedies for justified complaints. We last revised it in March 2003. At that time we said we intended to publish an additional document with further illustrations. In fact we have decided to expand and revise the March 2003 document, to include the additional material.

Where we find that an injustice has been caused by maladministration, we seek a remedy that would, so far as possible, put the complainant back into the position he or she would have been in but for the fault.

In the interests of fairness and consistency, while recognising that each case has to be considered on its own merits in the light of the particular circumstances, we aim to achieve similar remedies for similar injustices. With this in mind, we have devised the guidelines described in this note.

We apply these guidelines both in our formal reports and in considering proposals for 'local settlements'. Local settlements occur where, during the course of our consideration of a complaint, the authority concerned takes action which provides what we regard as a satisfactory outcome to the complaint. Commonly local settlements account for some 95 per cent of the complaints where a remedy is involved.

We recognise that increasingly councils try to deal with their own complaints. We welcome that. We hope our guidelines will be useful to councils in that context. Section 92 of the Local Government Act 2000 confirms that councils are empowered to remedy injustice arising from maladministration where the complaint is made only to the council and not to us. We hope that councils will see advantage in having a corporate policy on remedies so as to promote consistency, to recognise that more than one department may sometimes be involved in an individual complaint or in the remedy, and to emphasise the importance of this aspect of complaint handling. We hope that in formulating a policy councils will consider the advantage of measures to ensure that remedies are implemented reasonably quickly, for example giving specific officers delegated authority to pay compensation or take other action within a defined framework.

We first published a guidance note because the local authority associations suggested to us that it would be useful if we were to publish a note about the guidelines we use. That suggestion was warmly supported by many bodies who advise complainants. We consulted the associations, and other relevant bodies, about the text. We have consulted them about this revision and we are grateful for their comments.

The note begins by setting out the general framework. This is then illustrated by nine sections about specific areas of complaint. And, finally, there is a section about the way we consider a remedy for the time and trouble complainants have been put to in pursuing their complaints.

There are further illustrations of remedies in individual cases in our *Digest of cases*. The text of the *Digests* is available on our website at www.lgo.org.uk/digest.htm.

We hope this guidance note will be of value to a wide range of readers, and particularly to local authorities and individuals and organisations who advise complainants.

Tony Redmond
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Local Government Ombudsmen
February 2005

Part I General framework

Purpose

- 1 This section sets out the guidelines which we follow in assessing remedies.
- 2 The aim of the guidelines is to promote consistency in remedies. Each case has to be considered on its own merits in the light of the particular circumstances, but as far as possible broadly similar complaints, if justified, should receive broadly comparable remedies.

Applicability

- 3 The guidelines apply to local settlements as well as remedies included in formal reports. Local settlements occur where, during the course of the consideration of a complaint, the authority concerned takes action which provides what we regard as a satisfactory outcome to the complaint.
- 4 The guidelines should also be useful to authorities in seeking to deal with complaints themselves.

Maladministration and injustice

- 5 If there was maladministration, it does not necessarily follow that the complainant has suffered injustice as a consequence.
- 6 It is not enough to know that the complainant suffered a disadvantage. The disadvantage may have been caused entirely by a third party or even by the actions of the complainant. For a finding of maladministration causing injustice it must be clear, on the balance of probabilities, that the injustice, either wholly or partly, occurred as a consequence of the authority's maladministration.

General principle of remedies

- 7 The remedy needs to be appropriate and proportionate to the injustice. It should, as far as possible, put the complainant in the position he or she would have been in but for the maladministration.
- 8 There will be many circumstances where this cannot be achieved because of the passage of time or of events which have occurred. In such cases financial compensation may be the only available approach.

Views of complainants

- 9 In the course of our investigations, we try to find out the views of complainants about remedies if their views are not already apparent from what they said when first making the complaint. We will always take account of complainants' views. But we have to arrive at our own decisions about what would be a satisfactory remedy.

Apology

- 10 It might be expected that, as a matter of course, councils would make an apology where appropriate.
- 11 In some circumstances an apology is in itself all that is required by way of a remedy.

The authority's practices

- 12 Where appropriate we may suggest a review of the authority's practices, procedures or policy. Or we may make particular suggestions for improvements.
- 13 Where it is known that the authority has already carried out a review or that it will conduct one, that fact is usually mentioned in our decision. We may add other comments, for example to express appreciation, or to request a later report from the authority on the completion of the review or about how new arrangements are being implemented.

Elements in a remedy

- 14 There are a number of elements which, depending on the circumstances, could be considered in assessing a remedy. These elements are referred to in sections A–P below. In some cases one of these elements will be all that is required. In others a combination of elements will be appropriate.

A Specific action

- 15 Consideration should always be given to whether there is some practical action which would provide all or part of a suitable remedy. This may be appropriate, in particular, when the injustice stems from failure to take some specific action. So, for example, the action required might be to:
- issue a final statement of special educational needs where that has not yet been done;
 - take action to make the provision specified in a statement of special educational needs;
 - effect the necessary repairs to a complainant's council house;
 - offer a tenant a transfer of accommodation; or
 - assess entitlement to a benefit (for example, housing benefit) and make any requisite payment.
- 16 In other cases it may be appropriate to consider some practical action which would mitigate the injustice. Examples might be:
- providing screening to mitigate the effect of a development near to the complainant's property; or
 - providing specialist equipment or additional tuition for a child whose education had been adversely affected.

17 Consideration should also be given to any practical action which complainants themselves might suggest. This includes any imaginative suggestions which might not be directly related to the subject of the complaint, but which complainants themselves would consider an acceptable remedy. One such example, following a complaint by an environmental group about the siting of a school, was the suggestion of the group that the mayor should plant a tree during disability awareness week. The council was happy to arrange that.

18 The action to be taken may depend upon some prior action. For example, the remedy may be that the council should carry out an inspection of a property and, only if the inspection shows that the property is unfit for human habitation, issue a repair notice.

B Financial compensation

19 Financial compensation may be appropriate if, for example:

- the authority has taken the appropriate action but has delayed in doing so and the delay has caused injustice;
- there is no practical action which would provide a full and appropriate remedy; or
- the complainant has sustained financial loss or has suffered stress and anxiety.

20 Compensation needs to take account of all the particular facts of the case. In deciding what would be appropriate, the elements set out in sections C–P below should be considered where relevant.

21 Sometimes it may be appropriate to pay some of the compensation to someone other than the complainant who has been affected. For example:

- compensation could be paid partly to a parent and partly to a child; or
- part of the compensation paid to the complainant could be earmarked for a particular purpose for the benefit of a child or other person; or
- some part of the compensation could be put in trust for the benefit of a child on reaching majority; or
- if the complainant is making the complaint partly or wholly on behalf of other people, compensation could be paid also to those other people.

C The effect of the complainant's own action

22 Where appropriate, compensation should take into account the effects of the complainant's own action. Examples would be:

- where delay in dealing with the matter was partly the fault of the complainant and partly the fault of the authority;

- where the complainant has not taken action to mitigate the effect of the maladministration and could reasonably have been expected to do so;
- where the complainant did not take advantage of an available benefit (for example, parents not accepting a council's offer of four hours a week special tuition for a child because they wanted eight hours); or
- where the actions of the complainant were unreasonable, for example, by pursuing a complaint in unnecessary and excessive detail.

23 If a complainant is affected, either temporarily or long term, by a mental or physical impairment, that may need to be considered. It may be relevant to take into account the extent to which, in the circumstances at the relevant time, the complainant might reasonably have been expected to act.

D Money not paid to the complainant

24 Where money due to the complainant has not been paid, it will normally be a straightforward matter to include in the calculation of the remedy a sum representing the unpaid money. This could be, for example:

- housing benefit not paid for a period, or underpaid; or
- housing renovation grant not paid.

25 In some cases, interest on the payment may be justified – see paragraphs 49–50 below.

E Quantifiable loss

26 The complainant may, quite reasonably, have incurred costs which would not have been necessary but for the maladministration. In that case, reimbursement (in whole or in part) may be appropriate. Examples may include:

- paying for the additional help the parents procured for a child with special educational needs because the council delayed in drawing up a statutory statement or providing the help;
- expenditure by a tenant in decorating after repairs because the council did not do work itself;
- professional fees for a private assessment of a child by a psychologist; or
- abortive expenditure, for example fees in respect of a land purchase, which the council agreed but then cancelled.

27 In all such cases, what has to be decided is whether it was reasonable for the complainant to incur these costs, and whether they resulted from the maladministration.

28 Normally, compensation in these cases will relate to reasonable actual expense incurred.

F Loss of a non-monetary benefit

29 The injustice may be that the complainant (or the person on whose behalf the complaint was made, or some other person affected, for example a child of the complainant) has been deprived of a non-monetary benefit which he or she would have received if there had been no maladministration. For example:

- loss of education because a child is out of school for a period and no suitable alternative provision has been made; or
- a council tenant has been unable to use one of the rooms in his or her flat for a period because of lack of repair.

30 Quantifying the loss of such benefits may not be easy. However, in some circumstances (but certainly not all cases), there may be an objective measurement available, and that may be taken into account as an indication of the lost benefit. For example, one approach may be to ask – what would it have cost the authority to make the appropriate provision for the relevant period? This could be relevant to the first example above.

31 It has to be borne in mind, however, that the cost to the authority of what should have been done is only one factor to be taken into account. It is not a formula to be automatically applied. There may be times when the lack of provision saved the authority only a very small amount of money but has caused major injustice which would not be redressed by a payment based on the cost to the authority. The converse might also apply when the cost of the provision greatly exceeds the injustice. The effect on the complainant (or other relevant person) has to be considered.

32 In other cases, it may be possible to assess what value the authority put on the facility. So, in the second example, it may be appropriate to take account of a proportion of the assessed rent for the property. That could be related to the loss of the use of one room, for example.

33 Where there is no objective assessment of such a kind available, a reasonable broad assessment needs to be made.

G Loss of value

34 Where something owned by the complainant has lost value, an objective assessment of the loss may be possible, assessed where appropriate by an independent valuer.

35 This can sometimes be relevant in planning cases where, as a result of maladministration, there is devaluation of property and any reasonable action which the authority could take to restore amenity would not fully compensate for the injustice. Here the assessment would need to compare the value after the event and the probable value without the maladministration.

36 It can also be relevant where there is damage to possessions. Where items of relatively low value are involved, it would not normally be appropriate to seek an independent valuation. In such cases, a reasonable judgement should be made taking account of the comments of the complainant and the authority.

H Lost opportunity

37 Sometimes the injustice may be that the complainant was deprived of an opportunity. For example, the complainant may have been deprived of a right of appeal because the authority did not inform him or her of that right.

38 Compensation for a lost opportunity may sometimes be a fairly small sum, because it is only the loss of the opportunity which is certain and the actual outcome which would have occurred cannot be known. In other cases it may be reasonably certain what the outcome would have been, and that it would have been beneficial to the complainant. Compensation could then have regard to the effect of that outcome. Conversely, if it is reasonably certain that the outcome would not have been of benefit to the complainant, any compensation would be a small sum to reflect just the loss of opportunity itself.

J Distress

39 Compensation may be considered for what might generally be characterised as 'distress' (including stress, anxiety, frustration, uncertainty, worry, inconvenience or outrage). This needs to have regard to all the circumstances including:

- the severity of the distress;
- the length of time involved;
- the number of people affected (for example, members of the complainant's family as well as the complainant);
- whether the person affected is vulnerable and affected by distress more severely than most people; and
- any available professional opinion about the effects on any individual.

40 This element may be a moderate sum of a few hundred pounds or less. But in cases where the distress has been severe and/or prolonged, a more substantial sum may be justified.

K Professional fees in pursuing dispute

41 It may sometimes be appropriate to recognise that the nature of the complainant's difficulty with the authority was such that expenditure on professional fees in pursuing the dispute was justified; for example, legal fees or fees for a planning consultant.

42 In all such cases, what has to be decided is whether it was reasonable for the complainant to incur these costs in the circumstances of the case, and whether they resulted from the maladministration. Factors which could be taken into account may include:

- the complexity of the case;
- the circumstances of the complainant;
- whether the complainant is vulnerable; and
- whether the complainant could reasonably be expected to pursue the matter without professional assistance.

43 Where appropriate, the recommendation may be for a contribution to costs rather than reimbursement of the whole of the expenditure. (For example, because it was reasonable to engage a solicitor, not at the outset but at a later stage, or because the amount of professional advice commissioned was disproportionate.) In respect of legal fees it may be relevant to establish whether any of the costs were paid with assistance from the Legal Services Commission.

44 Complainants usually do not need a solicitor or other professional adviser to help them make a complaint to the Ombudsman. So we are unlikely to recommend that fees for this purpose should be reimbursed unless there are exceptional circumstances.

L 'Time and trouble'

45 Consideration should be given to the question of whether a payment should be included for the time taken and the trouble the complainant has incurred in pursuing the complaint with the council and the Ombudsman. See Part XI.

46 Care has to be taken not to confuse the question of time taken and trouble incurred in pursuing the complaint on the one hand with the element for distress (see paragraphs 39–40 above) on the other.

M Offsetting compensation

47 In circumstances where the complainant owes money to the authority (for example, for rent arrears), it would usually be appropriate to take that point into account. So if the compensation is the lower of the two amounts it would be offset against the debt. If the compensation is greater than the debt it could be used partly to pay the debt with any balance paid to the complainant. This can apply in relation to the authority as a whole and need not be confined to the department concerned in the complaint.

48 Offsetting this would not be suitable if the action which is being criticised was itself an attempt to offset. This could be the case if the complainant was entitled to a sum of money for a specific purpose, such as a redecoration allowance in lieu of the council decorating after repairs, or a house removal grant. In such cases, offsetting may not be appropriate for that element of the compensation which relates to that specific sum. However, offsetting might be reasonable for other elements of compensation, for example a 'time and trouble' payment.

N Interest

49 It may be appropriate to consider the inclusion of an interest calculation where, for example:

- a specific sum of money owed to the complainant was not paid at the proper time; or
- the complainant has had to expend money which would not have been necessary but for the maladministration.

50 Authorities would need to consider an appropriate interest rate. The rate which we recommend is the rate used by the County Court. Interest should start from the point where the complainant spent the money or did not receive money due, and should be applied until the date when payment is made.

P Formula

51 Sometimes it may be appropriate to express a remedy, not as a sum of money, but as a formula which sets out how the authority should itself calculate the requisite sum of money. Where relevant, this needs to include reference to any continuing problem so that the formula is designed to encompass the future as well as the past.

Q Wider implications

52 It may sometimes be clear that other people, and not just the person involved in the complaint, have been – or may have been – similarly affected. We can only formally recommend a remedy for the person who has made a complaint or a person on whose behalf a complaint has been made. But, in appropriate circumstances, we would suggest that the authority should consider the situation of other people with a view to applying a similar remedy.

Part II Council housing repairs

Introduction

- 1 This section sets out illustrations of the application of the general guidelines in Part I to remedies for injustice in cases involving council housing repairs.

Elements in a remedy

- 2 Consideration should be given to all the potential elements in a remedy as defined in Part I. The elements which are most likely to be relevant are as follows.

A Specific action

- 3 There will often be a situation where the problem is still continuing and the council should take some specific action to deal with it.
- 4 Where council housing repairs are concerned it is possible that the complainant will still be waiting for one or more of the following:
 - assessment to determine the cause of a problem (for example damp, or a leaking roof), so that effective remedial action can be taken;
 - repairs to be carried out or completed;
 - previous defective workmanship to be brought up to a satisfactory standard;
 - damage caused by council workers or contractors carrying out repairs to be put right; or
 - assessment of an insurance claim for damaged possessions.
- 5 Depending upon the particular circumstances of the case, we may recommend that the complainant should be given priority. In one case, major works and repairs were still outstanding after two-and-a-half years. Apart from recommending significant financial compensation, the Ombudsman also recommended that:
 - an urgent inspection of the complainant's house should be arranged to identify all outstanding repairs which should be completed within three months;
 - the complainant's request for central heating should be discussed with him and, if his current circumstances warranted it, his home should be included in the capital programme; and
 - arrangements should be made for the exterior of the complainant's house to be painted in the next available external decoration programme.

6 In some cases it may be appropriate to recommend priority for transfer to another property. In one example, the only offer made to the complainant was of a maisonette, which she later discovered to be in a dangerous condition, as well as being damp and having no form of heating. The Ombudsman recommended that the council should rehouse her in a suitable property in an area of her choice, and that her application should be given priority transfer status and be backdated to the date her tenancy of the maisonette began.

B Financial compensation

7 This is likely to be relevant and the elements set out in paragraphs 8–20 below need to be considered.

C The effect of the complainant's own actions

8 This may be relevant if the complainant has alleged unnecessary delay on the part of the council in effecting works or repairs. For example, if the complainant has unreasonably refused or postponed access to the property by council staff or contractors, the Ombudsman may conclude that the complainant has contributed to the delay by his or her own actions.

D Money not paid to the complainant

9 This may be relevant in council housing repair cases because many councils allow tenants themselves to redecorate, or arrange for redecoration, after council workers or contractors have carried out repairs. A redecoration allowance is often payable in these circumstances. In one case, the Ombudsman recommended that the council should consider paying the complainant's claim for the labour element of a redecoration allowance even though the claim would normally be out of time. This was because the complainant had been obliged to redecorate three rooms following structural repairs and replastering by council workers. Although he had received vouchers from the council to pay for decorating materials, he had not been paid the labour allowance to which he was entitled in the circumstances.

E Quantifiable loss

10 In council housing repair cases, where there has been maladministration, some of the common types of consequent quantifiable loss are:

- damage to the complainant's belongings resulting from the activities of council workers or contractors;
- the cost to the complainant of council workers' or contractors' use of the complainant's gas and electricity;
- the complainant's loss of earnings because of a council's failure to keep an appointment;

- damage to the complainant's belongings caused by deteriorating living conditions due to the council's failure to carry out necessary work or repairs; or
- additional living expenses caused by complainants having to vacate their homes and stay elsewhere, either because of their poor living conditions, or because of the disruption of the work being carried out by council workers or contractors.

F Loss of a non-monetary benefit

- 11 In council housing repair cases there is a contractual relationship via the tenancy agreement between council and tenant. Broadly speaking, the tenant agrees to pay rent, and the council agrees to maintain and repair the property as may become necessary. If the council persistently fails to honour its obligations, or takes an unreasonably long period of time to do so, then the tenant may be deprived of the full use and enjoyment of his or her home. That injustice may, in many cases, be increased by the distress of living in those conditions, as well as the loss of the benefit of the home. It may sometimes be appropriate to cover both aspects by referring, for example, to the inconvenience and distress of living in unsatisfactory conditions. Although it may not be easy to distinguish loss from distress, each element should, as far as possible, be considered separately in formulating the recommended remedy.
- 12 The number of rooms that the tenant is able to use may be restricted, or in extreme cases, he or she might have to vacate the property altogether. Where the tenant has endured this situation for a prolonged period, some element of rent rebate may be appropriate.
- 13 Depending upon the nature of the disrepair, the health of the complainant and his or her family may be affected by the council's maladministration. If the principal or only claimed injustice is that the complainant's health (or that of members of the household, where appropriate) was harmed and the complainant seeks compensation for this, consideration should be given to whether the complainant could seek a remedy in court proceedings. If there is such an alternative remedy, it might be reasonable – particularly if a significant sum could be an issue – to expect the complainant to resort to it because of the courts' expertise in dealing with claims for personal injury. This would need to be judged in the circumstances of the particular case.
- 14 Similar criteria will apply in council housing repair cases as are used in assessing compensation in other housing cases. That is, while the level of inconvenience, frustration and distress varies, it can often be very severe and may persist over a long period of time. The loss of benefits and level of distress need to be carefully assessed in the light of all the circumstances of the individual case.

15 The calculation of compensation needs to take into consideration factors such as:

- the length of time for which the repairs or other works had been outstanding before the council took any action;
- the length of time taken by the council actually to carry out the repairs or other works to an acceptable standard;
- the number of people in the complainant's household who have been affected by the council's maladministration;
- their degree of vulnerability (for example, the household may contain elderly or disabled people, or children);
- the nature and extent of the disrepair or living conditions with which the complainant and his or her household have had to live;
- whether whole rooms were unusable for any period of time;
- the effect of the disrepair or poor living conditions upon the health of the complainant and members of his or her household;
- whether the disrepair created a safety hazard; or
- whether the property is classified as unfit for habitation.

16 Because circumstances vary significantly, the guideline has to be broad, but generally it is likely that the appropriate sum would be in the range of £500 to £2,000 for a year, with broadly *pro rata* sums for shorter or longer periods. But a careful assessment of the facts may, on some occasions, point to sums above or below that range. A reasonable guideline generally is:

- for minor repairs, more than £500 a year is unlikely to be appropriate;
- for repairs having a significant impact on daily life, around £1,000 a year;
- for properties which are unfit, up to £2,000 a year with the higher end of the tariff being used where there was possible injury to health; and
- for cases where the property, while not unfit, was totally unsuitable for the tenants, up to £2,000 a year.

J Distress

17 This has already been referred to in paragraphs 11–16 above.

K Professional fees in pursuing dispute

18 Although there may not be many cases where this is relevant, consideration may need to be given to whether it was reasonable for the complainant to engage, for example, independent environmental health consultants, surveyors or lawyers.

- L 'Time and trouble'
- 19 Consideration should be given to the question of whether a payment for 'time and trouble' in pursuing the complaint with the council and the Ombudsman should be included. See Part XI.
- 20 In council housing repair cases it is likely that complainants will have been put to a great deal of trouble and possibly expense in having persistently to contact the council to ask for repairs to be done, to arrange for council staff to visit their homes, to arrange to take time off from work for this purpose, and so on. In these circumstances it can be distressing and inconvenient if appointments are not kept. Furthermore, in cases where there has been a long period of delay in carrying out major works, the compensation element may be significant. It will often be appropriate, therefore, to specify separately the compensation and 'time and trouble' elements of the remedy in order to emphasise that the complainant has not only had considerable distress and loss of benefit but also been put to 'time and trouble'.

Part III Neighbour nuisance

Introduction

1 This section sets out illustrations of the application of the general guidelines in Part I to remedies for injustice in cases involving neighbour nuisance.

Elements in a remedy

2 Consideration should be given to all of the potential elements in a remedy as defined in Part I. The elements which are most likely to be relevant are as follows.

A Specific action

3 There will often be a situation where the problem is still continuing at the time of the Ombudsman's report and it would be right for the Ombudsman to recommend that the council should take some specific action to deal with it.

4 This is particularly likely to be relevant when the complainant and/or the neighbour is a council tenant because the council as a landlord has more options open to it than it has in the cases of private tenants or owner/occupiers. One example would be a tenancy transfer, as in one case where the Ombudsman recommended an immediate transfer for a council tenant who was prone to depression. He lived directly beneath a mentally ill and abusive woman, who would not accept a transfer herself in accordance with the council's usual policy, and whom it would not evict because of her vulnerable status.

5 Other actions which might be considered, in relevant circumstances, are the issue of an abatement notice in respect of a statutory nuisance, and seeking an injunction.

B Financial compensation

6 This is likely to be relevant and the elements set out in paragraphs 7–20 below need to be considered.

C The effect of the complainant's own actions

7 It is reasonable, and indeed necessary, for the council to seek to establish the extent and frequency of the alleged neighbour nuisance before taking action. However, the complainants may not have carried out monitoring and reporting as requested by the council, such as completing diary sheets, thus hindering the resolution of their complaint and prolonging their own ordeal.

8 Alternatively, there may have been an element of reciprocity contained within the neighbour nuisance problem which made it more difficult for the council to resolve quickly.

E Quantifiable loss 9 People who experience neighbour nuisance are sometimes driven to vacate their own homes and stay with family or friends until the problem is resolved. Where the council delays unjustifiably in taking action in a case of neighbour nuisance, it may be appropriate to consider reimbursement of additional living expenses incurred by the complainant in escaping the nuisance.

F Loss of a non-monetary benefit 10 Where the complainant is a council tenant who has been deprived of the enjoyment of his or her home, some element of rent rebate may be appropriate. On one occasion, for example, the Ombudsman recommended that the council should not charge the complainant rent from the date of the Ombudsman's report until such time as the council's action against the perpetrator was processed by the courts.

H Lost opportunity 11 This is unlikely to be relevant but needs to be considered if, for example, a student claims to have been prevented from studying by constant noise or the complainant claims that performance at work was affected by being deprived of sleep.

J Distress 12 This is the most common feature of neighbour nuisance cases and will always be relevant to a greater or lesser degree.

13 Some element of financial compensation will usually be applicable and the calculation of this needs to reflect a number of factors, of which the following are examples (although not an exhaustive list).

- The length of time for which the neighbour nuisance persisted before the council took effective action.
- The severity of the neighbour nuisance.
- The frequency of occurrence.
- The number of people affected in the property in addition to the complainant.
- The vulnerability of the complainant, or any other people affected (for instance, they may be elderly, disabled or children).
- The extent of the council's maladministration.

14 While the degree of distress in neighbour nuisance cases does vary, it can often be very severe, and may sometimes persist over a long period. Substantial compensation may sometimes be appropriate.

- 15 The level of compensation for distress needs to be carefully assessed in the light of all the circumstances of the individual case. Because these do vary significantly, the guideline has to be broad, but generally it is likely that the appropriate sum would be in the range of £500 to £2,000 for a year, with broadly *pro rata* sums for shorter or longer periods. But a careful assessment of the facts may, on some occasions, point to sums above or below that range.
- 16 It needs to be borne in mind that it is possible that severe distress may be caused over quite a long period of time without the council necessarily having acted with maladministration. Indeed, it may have conflicting duties which it cannot quickly or easily resolve. For instance, this may be so in the case of mentally ill tenants whom the council has a duty to house because they are vulnerable.
- 17 In such cases courts may be reluctant to grant eviction orders. The perpetrator of the nuisance may not be willing to move voluntarily and, even if he or she is, or if the victim of the nuisance is willing to be moved, the council may not immediately be able to provide suitable alternative accommodation. However great the distress caused to the complainant, the test can only be whether the council dealt with the problem fairly and properly.

K Professional fees in pursuing dispute

- 18 In exceptional cases legal fees incurred by the complainant may need to be considered. In one case where the complainant and his family suffered racial harassment for 11 years without the council taking their complaints seriously, the Ombudsman recommended the reimbursement of all reasonable legal fees incurred by the complainant in pursuing his complaint with the council.

L 'Time and trouble'

- 19 Consideration should be given to the question of whether a payment for 'time and trouble' in pursuing the complaint with the council and the Ombudsman should be included. See Part XI.
- 20 It should be noted that the fact that the complainant was required to expend considerable effort in monitoring and reporting may not of itself be completely the consequence of any maladministration by the council. Complainants can reasonably be expected to co-operate with the council in taking appropriate action. Compensation becomes relevant only where the council has not progressed the matter as it should and the complainants are put to additional effort in order to persuade or enable the council to proceed.

Part IV Council housing management

Introduction

- 1 This section sets out illustrations of the application of the general guidelines in Part I to remedies for injustice in cases involving:
 - homelessness
 - allocation
 - transfer
 - adaptation

Elements in a remedy

- 2 Consideration should be given to all of the potential elements in a remedy as defined in Part I. The elements which are most likely to be relevant are as follows.

A Specific action

- 3 This element is likely to apply if:
 - the complainant is still homeless (and the council has a duty to him or her or has not properly decided if it has a duty);
 - the council has failed to allocate housing to someone in accordance with its rules, or has made an unsuitable offer; or
 - the council has not dealt properly with an application for a transfer or a request for an adaptation.
- 4 In such cases, the remedy is likely to include specific action which the council would have taken if it had acted without fault.

B Financial compensation

- 5 This is likely to be relevant and the elements set out in paragraphs 6–21 below need to be considered.

C The effect of the complainant's own actions

- 6 This should always be considered. For example:
 - has the complainant failed to provide information reasonably required by the council?
 - has there been unreasonable delay on the complainant's part?
 - has the complainant been abusive, threatening or otherwise unreasonable in his or her own conduct?
 - has the complainant rejected an offer which, while not ideal, is reasonable in the circumstances (for example, it would probably be unreasonable for a complainant living in a one bedroom flat with six children to refuse an offer of a property with four bedrooms if the council can show that there are other applicants who have higher priority for what little larger accommodation is available)?
 - has the complainant restricted his or her areas of choice to such an extent that delay in making an offer is unavoidable and the council has explained the effect of the restriction?

D Money not paid to the complainant

7 This may only be relevant in a few cases if, for example, a complainant has been denied redecoration or relocation payments to which he or she was entitled.

E Quantifiable loss

8 There may be a quantifiable loss which the council should reimburse (in whole or in part) if, for example, because of fault by the council:

- the complainant's property has been lost or damaged; or
- the complainant has incurred avoidable additional living expenses (such as the cost of eating out, transport costs, or the cost of a carer, which might have been avoided if necessary adaptations had been carried out at the right time).

F Loss of a non-monetary benefit

9 This may be relevant if, for example, the complainant was unable to use some upstairs rooms because he or she could not climb stairs, and delay in arranging transfer or adaptation of the premises caused loss of the benefit of the use of the rooms upstairs.

H Lost opportunity

10 This can occur, for example, where a homeless applicant was not told of the statutory right to review the council's decision, or someone was not told of any appeal arrangements about the suitability of offers.

11 In such cases, it may be possible to judge what the likely outcome would have been – either favourable or unfavourable – if the opportunity had been given. Sometimes the likely outcome cannot be reasonably judged and so a small amount of money to recognise the denial of an entitlement to consideration may be appropriate. This is unlikely to be more than £100.

J Distress

12 This is likely to be relevant. It may often be the single largest element in a remedy.

13 It may sometimes be claimed that the health of a complainant and his or her family has been affected by the council's maladministration. If the principal or the only claimed injustice is about health, consideration should be given to whether the complainant could seek a remedy in court proceedings. If there is such an alternative remedy, it might be reasonable – particularly if a significant sum could be an issue – to expect the complainant to resort to it because of the courts' expertise in dealing with claims for personal injury. This will need to be judged in the circumstances of the particular case.

- 14 Similar criteria will apply in housing management cases as are used in assessing compensation in housing repair cases. That is, while the level of inconvenience, frustration and distress varies, it can often be very severe and may persist over a long period of time. The loss of benefits and level of distress need to be carefully assessed in the light of all the circumstances of the individual case.
- 15 In making a judgement consideration needs to be given to factors such as:
- the length of time the injustice has lasted;
 - the number of people affected and their vulnerability, if any;
 - any risk to the safety of the complainant and other members of the household; and
 - the effect on the ability of the complainant and other members of the household to lead the life they would have been able to live but for the maladministration.
- 16 Because circumstances vary significantly, the guideline has to be broad, but generally it is likely that the appropriate sum would be in the range of £500 to £2,000 for a year, with broadly *pro rata* sums for shorter or longer periods. But a careful assessment of the facts may, on some occasions, point to sums above or below that range.

K Professional fees in pursuing dispute

- 17 A complainant may reasonably incur the professional fees of, for example, a solicitor, environmental health consultant, surveyor or medical adviser in pursuing a dispute with a council about any of these housing management matters. These are likely to be exceptional cases.

L 'Time and trouble'

- 18 Consideration should be given to the question of whether a payment for 'time and trouble' in pursuing the complaint should be included. See Part XI.

M Offsetting compensation

- 19 This may be relevant. See paragraphs 47–48 of Part I.

N Interest

- 20 This may be relevant. See paragraphs 49–50 of Part I.

P Formula

- 21 If it is possible that there might be further delay in taking necessary specific action (see paragraphs 3–4), it may be appropriate to include in the remedy a formula, such as provision for further payments of so much per month, until the action has been taken.

Part V Housing benefit and council tax benefit

Introduction

1 This section sets out illustrations of the application of the general guidelines in Part I of this guidance note to remedies for injustice in cases involving housing benefit and council tax benefit.

Elements in a remedy

2 Consideration should be given to all the potential elements in a remedy as defined in Part I. The following are likely to be the most relevant.

A Specific action

3 The problem may often be continuing at the relevant time and consideration should be given to appropriate action. For example to:

- determine a claim;
- make a payment to the claimant; or
- make payments to the landlord.

B Financial compensation

4 This is likely to be relevant and the following amounts should be used as guideline figures where there has been a delay in dealing with housing benefit claims and the time taken is four weeks or more.

For each month	£25
Notice of seeking possession	£100
Court summons	£100
Suspended possession order	£300
Eviction/loss of home	No fixed amount – to be determined in each case depending on the individual circumstances but should be substantial.

These amounts are cumulative.

5 Factors we take into account when deciding what amount would be fair include:

- length of delay;
- proportion of rent covered by housing benefit;
- whether the landlord is the council, a social landlord or a private landlord; and
- whether the rent was paid and how.

6 In deciding what figure is appropriate, account should be taken of the amount of distress, time and trouble actually experienced by the complainant as a result of the council's maladministration.

- 7 Complaints may come from landlords. They will generally also be about delay in determining or paying a claim. Compensation for the landlord should be limited in general to an amount representing interest (at the County Court rate) on the amount of money owed in benefit but, if the circumstances justify it, up to £15 per month may be appropriate if the time taken exceeds eight weeks. The complaint may, however, be about a failure to pay the landlord rather than the tenant, and the compensation in such a case should relate to the amount of rent lost as a result of maladministration.
- 8 It will in general not be appropriate to consider compensation on a monthly basis for delay in dealing with council tax benefit claims. Injustice in these cases will normally only arise when the council takes recovery action. The guideline figures are:

Court summons	£50
Liability order	£100
Bailiff's letter (not threatening action)	£50
Bailiff's letter (threatening seizure of goods/committal)	£100
Bailiff's visit	£100
Removal of goods	No standard amount (consider the particular circumstances).

These figures are cumulative.

C The effect of the complainant's own actions

- 9 It may be relevant to take into account any delay or failure to co-operate by the complainant. For example, failure to provide information, or refusal to allow access, although this may already have been taken into account when deciding how much delay was the result of the council's maladministration.

D Money not paid to the complainant

- 10 Where money due to the complainant has not been paid, it will normally be a straightforward matter to include in the calculation of the remedy a sum representing the unpaid money, for example, housing benefit not paid or underpaid for a period.

E Quantifiable loss

- 11 It may be appropriate to compensate a complainant for the interest charged on money borrowed to pay the rent (the actual amount unless it was unreasonably high), or the costs of obtaining information required unnecessarily by the council because, for example, documents already supplied have been lost.

12 Where benefit has been lost because of maladministration by the council, it is appropriate to consider a payment. For example, where bad advice led to a claim being made late or where a council error was discovered too late for full reimbursement to be made under the Housing Benefit Regulations.

H Lost opportunity

13 A right to appeal may have been lost because of a failure by the council, for example to give appropriate advice. The appropriate remedy is likely to be a fresh determination giving a fresh right of appeal. If that cannot be achieved, compensation may be considered, but that should reflect the particular circumstances of the case.

14 Wrong advice may lead to a tenancy being taken at a rent which subsequently is found not to be affordable. Or delay in determining a claim may result in the complainant owing substantial sums in arrears because, for example, the rent is restricted. It may then be appropriate to recommend compensation to cover the excess rent for a reasonable period.

J Distress

15 This is likely to be a relevant factor but the figures given in paragraphs 4, 7 and 8 are intended to take account of it. Additional amounts may be appropriate where the complainant is vulnerable, especially where the council knew or ought to have known of the vulnerability and should have acted differently, for example by offering a home visit to a claimant.

K Professional fees in pursuing dispute

16 Consideration may need to be given to whether it was reasonable for the complainant to use a solicitor or accountant, for example:

- where eviction was possible;
- where the complainant was self-employed and/or the matter was complicated; or
- where the complainant is vulnerable.

L 'Time and trouble'

17 A separate amount for 'time and trouble' will not usually be appropriate because it is expected that the guideline figures in paragraphs 4, 7 and 8 will be varied up or down to take account of the degree of extra effort involved in trying to sort out the problem.

Part VI School admissions

Introduction

- 1 This section sets out illustrations of the application of the general guidelines in Part I to remedy injustice in cases involving school admissions.

Elements in a remedy

- 2 Consideration should be given to all the potential elements in a remedy as defined in Part I. However, the nature of school admission complaints means that remedies will mostly be concerned with specific and practical action.

A Specific action

- 3 School admission complaints are usually urgent. They are mostly about a school place for the following term after the appeal process has taken place. If there is fault which caused injustice, a quick remedy is normally needed so that the situation can be resolved before the start of the relevant term. That will usually be a more suitable approach than a more extended investigation.
- 4 There are two common practical remedies. The more usual is an arrangement for a fresh appeal.
- 5 But sometimes the appropriate remedy is the offer of a place in the school the parents want for their child. This would be appropriate where the evidence is clear that, if there had been no fault, the parents would have secured a place. An example is if the admissions criteria were incorrectly applied and, as a result, the child was wrongly denied a place and the appeal would have been allowed if the appeal panel had properly appreciated that fact.
- 6 The offer of a further appeal hearing is appropriate:
 - if there was some flaw in the appeal procedure and it is not clear what the outcome would have been if the appeal had been considered correctly; or
 - if the constitution of the appeal panel was unlawful or otherwise improper (whether or not it seems that the result of the appeal might have been different), since such a flaw is so fundamental that there could not be any confidence that the appeal was fair and independent.
- 7 In the circumstances described in paragraph 6, the authority might wish to offer a new appeal to other parents who were similarly affected, but who had not complained.
- 8 A new appeal would not be appropriate where there was a fault in the procedure but it is clear that, if things had been done correctly, the result would have been no different (in other words there was fault but no injustice).

- 9 Sometimes the parents may not wish to take up the offer of a fresh appeal, for example if they no longer want a place in the school. But the timely offer of a new appeal would normally be a satisfactory remedy of itself.
- 10 A new appeal should be heard by a panel with different members (and, if possible, a new clerk) and the admission authority should agree to accept the outcome. The first appeal panel's decision is final, unless quashed on judicial review. So, in effect, what the admission authority should do is to arrange a new appeal by a body similarly constituted and operating in the same way and agree to accept that body's decision.
- 11 In the second appeal, the panel would need to consider the circumstances at the time of the appeal and should also take into account:
 - all the evidence and arguments put by the authority and the appellant, both new points and any reiteration of earlier points; and
 - the fact that circumstances (for example, numbers on roll) in the meantime may have changed to the disadvantage of the appellant, so that it would be reasonable also to have some regard to any representation made by the appellant about the situation as it was at the time of the original appeal.

B Financial compensation

- 12 Financial compensation is only likely to be relevant in a minority of cases. But it could arise, for example, because:
 - there was unreasonable delay in arranging an appeal;
 - the complaint could have been readily settled at an early stage by a fresh appeal, but the opportunity was unreasonably neglected so that there was a period of anxiety and frustration for the parents, and they were denied – either for a significant period or altogether – the fair and satisfactory appeal to which they were entitled; or
 - a child was deprived of education for a period because the council failed to arrange the offer of a suitable school place.
- 13 Where financial compensation is relevant the elements set out in paragraphs 14–21 below need to be considered.

E Quantifiable loss

- 14 Quantifiable loss might arise, and the reimbursement of costs would be appropriate, for example:
 - because parents necessarily incurred additional transport costs for their child to attend a more distant school;

- the child was wrongly denied a place in a particular kind of school (for example, a school of a particular denomination) and the admission authority did not promptly correct the error so that, for a period, the parents could only secure education of that kind at a private school; or
- the child was wrongly denied a place in the school of the parents' preference and the mistake was not rectified before the child started at another school, so that a change of school was needed, and reimbursement of abortive costs (for example, for school uniform) could be necessary.

F Loss of a non-monetary benefit

15 If the injustice is that a child was prevented from attending school for a period because no suitable school was offered and the authority provided no other education, compensation should reflect the significance of the loss.

16 It may not always be easy to translate the value of lost education into monetary terms. But loss of education for a child is likely to be a significant disadvantage. It may, for example, sometimes be sensible to take into account the cost of the provision in assessing its value. Cost and value do not always equate, but the one may be a useful guide to the other if there is no other objective basis available. So consideration could be given to what it would have cost the authority to make the appropriate provision for the relevant period.

17 All the circumstances should be considered. On the one hand, there might be factors which suggest that the child would not have benefited fully from a school place if it had been available (if, for example, the child is a poor school attender). On the other hand, there may be circumstances where parents have paid for private tuition and the cost of that exceeded the normal cost of the school place.

18 Generally remedies are likely to be around £1,000 a term but could be above or below that depending on the facts. It would be relevant to take into account whether the loss of education was at a particularly crucial stage (for example, in the period leading to external examinations in a secondary school; or in a primary school the first term, which is especially important for learning development). For children with special educational needs it would also be relevant to take account of any special provision (for example, speech therapy) which was needed to facilitate learning and development.

J Distress

19 Distress is likely to be relevant, though this element of compensation would probably be a small sum of perhaps a few hundred pounds. This could be relevant for example:

- if there was delay in arranging an appeal and there was a prolonged period of anxiety for parents and child; or

- the child was wrongly denied a place in the school of the parents' preference and the offer of a place there was not made until the child had started at another school, but the child had settled in and the parents did not wish at that late stage to take up the offer of the preferred school.

K Professional fees in pursuing dispute

20 It is only likely to be in exceptional circumstances that this is relevant.

L 'Time and trouble'

21 Consideration should be given to the question of whether a payment for 'time and trouble' in pursuing the complaint should be included. See Part XI.

Part VII Special educational needs

Introduction

- 1 This section sets out illustrations of the application of the general guidelines in Part I to remedies for injustice in cases involving special educational needs.

Elements in a remedy

- 2 Consideration should be given to all of the potential elements in a remedy as defined in Part I. The elements which are most likely to be relevant are as follows.

A Specific action

- 3 Consideration should always be given to whether there is some practical action which would provide all or part of a suitable remedy. This may be particularly appropriate when the injustice stems from the failure to take some specific action. So, for example, suitable action might be to:
 - begin a statutory assessment, if it has not yet begun;
 - complete a statutory assessment if it has begun but is not completed;
 - issue a draft or final statement of special educational needs, if that has not been done;
 - arrange the special educational provision defined in a child's statement;
 - arrange a review of a statement;
 - provide some supplementary help, or particular equipment for a child; or
 - where a young person has left, or is about to leave school, provide a sum of money which would assist the young person in pursuing a college or other course.
- 4 Consideration should be given to any practical action which complainants themselves might suggest.

B Financial compensation

- 5 Financial compensation is likely to be relevant and the elements set out in paragraphs 6–22 below need to be considered.

C The effect of the complainant's own actions

- 6 Where appropriate, compensation should take into account the effects of the complainant's own action. An example would be if the complainant had not taken advantage of an available benefit (for example, parents not accepting a council's offer of four hours a week special tuition for a child because they wanted eight hours).
- 7 Another example would be where a parent withdrew a child from school, or declined to take up a school place offered for the child. It is then necessary to consider the reasonableness of the parent's actions and their effect.

E Quantifiable loss

- 8 The complainant may, quite reasonably, have incurred costs which would not have been necessary but for the maladministration. Reimbursement would then be appropriate, provided there is satisfactory evidence of the expenditure. Examples would be:
- private school fees and additional expenditure such as school uniform in circumstances where the council has failed to provide a suitable placement for a child;
 - additional help for a child from private tutors;
 - purchase of equipment for a child;
 - additional home-to-school transport costs; and
 - the cost of caring for a child at home if the child was out of school for a period (for example, childcare or loss of earnings).
- 9 In all such cases, the question must be addressed of whether it was reasonable for the complainant to incur these costs and whether they were needed because of maladministration.

F Loss of a non-monetary benefit

- 10 Possible injustice may be that a child has failed to receive a benefit for a period, for example:
- additional tuition;
 - a place in a specialist school;
 - full-time education; or
 - the child may have been deprived of any education.
- 11 The injustice may be very significant, particularly if the child has not received any education at all for a period.
- 12 Quantification of a loss of benefit may not be easy. However, one approach which may be helpful in some circumstances is to calculate what it would have cost the council to make the appropriate provision for the relevant period, and then have regard to that cost as an indication of the value of the lost benefit. The loss of educational opportunity is incalculable but some practical approach has to be taken. Although the cost of a benefit and the value of it may not be the same, the cost may give a useful indication. But all the circumstances should be considered and any other relevant factors should be taken into account, for example any available professional advice about the likely effects of the loss of benefit.
- 13 Loss of education in relation to mainstream schools is likely to need a remedy of around £1,000 a term, depending on all the circumstances (see Part VI paragraphs 15–18). Loss of education in a more specialised placement needs to be considered individually.

H Lost opportunity

- 14 An example of a lost opportunity would be where a parent was deprived of the opportunity to appeal to the Special Educational Needs and Disability Tribunal at the relevant time. (For example, because the council did not inform the parent of the right of appeal or, through a delay in the process of assessment and issuing a statutory statement, delayed in putting the parent in a position where an entitlement to appeal arose.)
- 15 Once a parent has lodged an appeal, it would normally take some time (often around four months) for the appeal to be arranged, held and determined. That delay would not of course be the fault of the council, but would be a natural consequence of making an appeal.
- 16 Where parents have lodged an appeal, it may be necessary to await the outcome before assessing injustice. If the parent loses the appeal, the injustice may be limited to the effect of any delay in issuing the statement and putting the parent in a position to appeal (for example, prolonged uncertainty and anxiety). But if the parent wins the appeal, with the result that the child has additional provision or has a place in the school desired by the parent, then injustice may be more substantial if it seems reasonably likely that the outcome would have been the same if the appeal had been heard earlier. In those circumstances, the injustice is likely to be that the child was deprived of a benefit for a period. That is the period of delay by the council, but not the time taken for the appeal to be heard and determined, which is not the council's responsibility.

J Distress

- 17 Compensation may be considered for what might generally be categorised as 'distress' (stress, anxiety, frustration, uncertainty, worry, inconvenience or outrage). This needs to have regard to all the circumstances including:
- the severity of the distress;
 - the length of time involved;
 - the number of people involved (likely to be the child and the parents); and
 - whether any person affected is vulnerable and so distressed more severely than most people.
- 18 This element may be a moderate sum of a few hundred pounds. But in cases where the distress has been severe and/or prolonged, a more substantial sum may be justified.

K Professional fees in pursuing dispute

19 It may sometimes be appropriate to recognise that the nature of the complainant's difficulty with the council was such that expenditure on professional fees in pursuing the dispute was justified; for example, legal fees or fees for an assessment of the child's special educational needs by an educational psychologist because there was unreasonable delay by the council in securing the necessary advice.

20 In all such cases it needs to be decided whether it was reasonable for the complainant to incur these costs in the circumstances of the case, and whether this was as a result of maladministration. The factors which could be taken into account may include:

- the complexity of the case;
- the circumstances of the complainant;
- how long the dispute has continued;
- whether the complainant is vulnerable; and
- whether the complainant could reasonably have been expected to pursue the matter without professional assistance.

21 It should, however, be noted that the comments in paragraphs 19 and 20 do not cover professional fees in connection with an appeal to the Special Educational Needs and Disability Tribunal. An application for costs related to an appeal can be made to the Tribunal.

L 'Time and trouble'

22 Consideration should be given to the question of whether a payment for 'time and trouble' in pursuing a complaint should be included. See Part XI.

Nature of remedy

23 It is likely in most cases that the injustice was caused partly to the child and partly to the parents.

24 Often it is possible to provide a remedy for the child, either wholly or partly, by means of practical action. But where the remedy is monetary compensation which is in part intended for the benefit of the parent and in part for the benefit of the child, this should be made clear to the parents if the whole payment is made to them.

25 In some circumstances it may be appropriate to consider formally channelling money to the child by means of a trust fund. This may be sensible if the child is very young and the amount of money is significant. But generally, it is likely to be most helpful that the benefit should accrue to the child immediately rather than, for example, through a trust fund where the money becomes available to the child on reaching the age of 18.

Part VIII Environmental health

Introduction

- 1 This section sets out illustrations of the application of the general guidelines in Part I to remedies for injustice in cases involving environmental health complaints. These complaints can cover a wide range of subjects, but the majority relate to statutory nuisance, resulting from noise, smells, fumes etc; waste disposal; licensing; and contaminated land. The remedies here relate essentially to commercial activity, rather than to neighbour nuisance arising from domestic use. Remedies relating to neighbour nuisance are referred to in Part III.

Elements in a remedy

- 2 Consideration should be given to all the potential elements in a remedy as defined in Part I. The elements which are most likely to be relevant are as follows.

A Specific action

- 3 There will often be a situation where the problem is ongoing and it will be necessary for the council to take some specific action to deal with it.
- 4 This is particularly true of noise nuisance cases where the council could require that some noise mitigation measures should be taken, for example, construction of bunds, or erection of fences in appropriate places if the noise is outdoors, or the installation of soundproofing between walls or floors where the noise is inside.
- 5 It may be that a statutory nuisance was identified by the council but that it failed to issue an abatement notice. Here, it may be appropriate that the council should reconsider issuing an abatement notice. Or it may be that a notice was issued but not complied with, and the council should consider whether to enforce the terms of the notice.
- 6 Or the specific action needed may be for the council to conduct a proper investigation of the alleged nuisance, that is visit at appropriate times, use adequate equipment, carry out sufficient observations and so on.
- 7 In suitable cases the council could consider whether other powers would resolve the situation more effectively, for example enforcing planning conditions.
- 8 In contaminated land complaints, it may be appropriate for the council to carry out a contaminated land risk assessment if it has not already done so.
- 9 In those cases where a council does not have an out-of-hours service to deal with complaints of noise nuisance, possible courses of action to examine are:
 - to consider introducing an out-of-hours service;

- to make an agreement for joint cover with a neighbouring authority; or
- to check that arrangements are working satisfactorily for dealing with complaints on a case by case basis.

B Financial compensation

10 Financial compensation may be relevant and the elements set out in paragraphs 11–22 below need to be considered.

C The effect of the complainant's own actions

11 The complainants may have purchased their property knowing that a site next to them or near to them had an established industrial use, and so they could have expected some disturbance (albeit the effect of any changes since their purchase could be relevant).

12 Or the complainants, in response to noise or smells from neighbouring land, might have taken their own action and have gone beyond what was reasonable in the circumstances to try to prevent the noise or smell, and that might have exacerbated the situation and made it more difficult for the council to deal with.

13 Complainants may have failed to return diary sheets or may have been responsible for some delay in bringing matters to the attention of the council, or there may have been a lengthy period without complaints for no good reason, so that the council believed the problem was at an end.

D Quantifiable loss

14 In some cases, where a council has failed to carry out proper monitoring or does not have the specialist equipment available, complainants may incur costs in instructing a specialist to carry out the monitoring and produce a report which is then submitted to the council as evidence. Where such action was reasonable, reimbursement of the complainants' expenses is likely to be appropriate. Or the complainant may have been prevented from taking some action, for example opening a business, until the council took appropriate steps to deal with the nuisance. In these circumstances compensation for loss of profit or for expenses incurred would probably be involved, provided that there was sufficiently reliable financial information available on which to base an estimate of loss.

F Loss of a non-monetary benefit

15 This is the most common feature of environmental health cases and is always likely to be relevant to a greater or lesser degree.

16 In cases where a complainant has suffered a significant reduction in the amenity of his or her home as a result of nuisance continuing for a period longer than it would have done had the council acted correctly, payment of compensation is likely to be necessary.

17 The calculation of this needs to reflect a number of factors, of which the following are examples (although not an exhaustive list):

- the length of time for which the nuisance persisted before the council took effective action;
- the severity of the nuisance, for example, disturbance to sleep or normal domestic activity, such as use of garden or opening of windows; and
- the frequency of occurrence and the time of day.

18 The calculation of the level of compensation for loss of amenity needs to be carefully assessed in the light of all the circumstances of the individual case. Because these do vary significantly the guideline has to be broad, but generally it is likely that the appropriate sum where a statutory nuisance is involved would be in the range of £1,000 to £2,000 a year. However, some cases might warrant sums below or above this range.

J Distress

19 There may be occasions where a complainant has been particularly affected by the nuisance, for example, where there is a suspicion that fumes may be harmful, or where chemicals or dust could aggravate an existing problem, such as asthma. In these circumstances it is necessary to take the sensitivity or vulnerability of the complainant into account, provided that there is satisfactory evidence of it. An additional sum in the range of £500 to £1,000 a year might be appropriate in such cases.

K Professional fees in pursuing dispute

20 Where a complainant has taken his or her own legal action against the perpetrator of the nuisance in the absence of the council taking any action, and has incurred professional fees in doing so, and where it is clear that the council should have taken more vigorous action against the perpetrator, a contribution towards those professional costs could be appropriate. Or a complainant may reasonably have engaged other professionals, for example a noise consultant, and similarly a contribution to the cost could be justified.

L 'Time and trouble'

21 Consideration should be given to the question of whether a payment for 'time and trouble' in pursuing the complaint with the council and the Ombudsman should be included. See Part XI.

22 It should be noted that the fact that the complainant was required to expend considerable effort in monitoring and reporting may not in itself be the consequence of maladministration by the council. Complainants can reasonably be expected to co-operate with the council in taking appropriate action. Compensation becomes relevant only where the council has not progressed the matter as it should and the complainants are put to additional effort in order to persuade or enable the council to proceed.

Part IX Planning

Introduction

- 1 This section sets out illustrations of the application of the general guidelines in Part I to remedies for injustice in planning complaints.

Assessment of injustice

- 2 In planning complaints it is particularly important to assess injustice carefully. Where there has been fault, this may not necessarily have caused injustice. And if injustice was caused, it is necessary to analyse carefully what that injustice was.
- 3 For example, if permission for development was given but there was some fault in the process, the first question to consider would be – would the outcome have been the same even if there had been no fault? If it is likely that the outcome would have been different, then the question to consider would be – what would the other outcome probably have been? For example, would the building concerned have been less extensive or differently sited, or would there have been different conditions attached? If there had been no fault in the process, the outcome might in fact have been that there was still some impact on the amenity of neighbours. So altogether, a careful comparison is needed of what happened and what would probably have happened if there had been no fault.
- 4 It may also be necessary to consider the implications of ‘permitted development’ rights in relation to existing buildings. The exercise of such rights might have a serious impact on neighbouring amenity. So it may be relevant to consider whether the exercise of those rights might have been worse for the complainant than the planning permission which was given.

Elements in a remedy

- 5 Consideration should be given to all the potential elements in a remedy as defined in Part I. The elements which are most likely to be relevant are as follows.

A Specific action

- 6 There will sometimes be situations where the complaint is that the council failed to act. The remedy may then be that appropriate action should be taken.
- 7 A common complaint is about failure to enforce against breaches of planning control. This may be work carried out without planning permission, or a failure to comply with conditions imposed when planning permission was granted. A council might delay investigating reports of such breaches or fail to take action despite evidence of unauthorised development taking place. Examples of actions which might be needed are:

- where the council resolved to take enforcement action but did not do so, the council may need to take steps to serve enforcement notices or enforce a planning agreement, assuming that the circumstances calling for enforcement remain the same;
 - where the council did not investigate complaints of unauthorised development or any other breach of planning control, the council may need to mount an urgent investigation to assess available courses of action, make a report to members or to officers with delegated authority, and decide whether to take action to secure the submission of a planning application or to initiate enforcement action as appropriate; or
 - where a breach of planning control has persisted despite the efforts of the council over a long period of time, the council may need to consider a report on all the available options, including service of an injunction or making a compulsory purchase order (and the council may need expertise it does not have itself, such as advice from counsel).
- 8 Where development has not yet been completed, the council might sometimes be able to negotiate an amendment to the permission so as to prevent injustice arising for the complainant.
- 9 In suitable cases, it might be appropriate for the council to use statutory powers, for example:
- a modification order (if the development is not complete);
 - a revocation order (to remove the planning permission);
 - a discontinuance order (to require the use of land or buildings to cease, buildings to be removed or to impose conditions on operation);
 - compulsory purchase order; or
 - action to abate noise through the Environmental Protection Act 1990 if there is a statutory nuisance.
- 10 It may be possible to achieve some change to the development, at the council's cost, to mitigate adverse effects on a complainant's amenity. See under 'loss of benefit' paragraphs 19–22.
- 11 It may sometimes be relevant, particularly if a lot of people are affected, for the council to take steps to encourage and assist the voluntary relocation of an industrial enterprise, for example.
- 12 If the complaint is from an amenity society, the question of some contribution to the society's costs may arise. But it may also be relevant to consider some kind of environmental project, in sympathy with the aims of the society, which the council might undertake.

- B Financial compensation**
- 13 It will usually be sensible to consider first whether some action by the council will provide the remedy, or part of the remedy, for a complaint where fault has caused injustice. But sometimes a specific action of itself would not provide a complete remedy. Financial compensation may be relevant and the elements set out in paragraphs 14–36 below would need to be considered.
- C The effect of the complainant's own actions**
- 14 This may be relevant if the complainant has not co-operated fully with the council's investigations, for example by failing to keep a diary of events, or refusing the council access to his or her land to make observations.
- 15 If a person notified of a planning application does not object, the opportunity might be lost for the council to be alerted to facts of which only that person is aware. But a complainant's failure to object to development would not absolve the council from its responsibility to consider all material planning considerations, including any which might affect the complainant.
- E Quantifiable loss**
- 16 There are unlikely to be many circumstances where the Ombudsman would entertain a complaint from a planning applicant. That is because applicants have a remedy for refusal of planning permission, or delay in considering it, by appealing to the Secretary of State. Any residual injustice not remedied by an appeal, such as costs or the development profit caused by a delay in granting planning permission, would not be a matter the Ombudsman could lawfully consider once an appeal has been lodged.
- 17 However, if it would be unreasonable to expect the complainant to resort, or have resorted, to the right of appeal to the Secretary of State, the Ombudsman could consider a complaint. One such example would be where there was misleading pre-application advice from the council which the applicant could not reasonably have guarded against, and it was unreasonable to expect the applicant to appeal, for example because the grounds for refusal were policy grounds which were very unlikely to be disturbed on appeal.
- 18 In such circumstances quantifiable loss could be an issue. This might involve the planning application fee, and the cost of preparing an application which the applicant had been advised would be acceptable but which, in reality, had no reasonable hope of being granted.

F Loss of a non-monetary benefit

- 19 The most common loss of benefit in planning cases is the effect on the complainant's amenity. This effect may be:
- temporary (for example, until there has been compliance with an outstanding condition on the planning permission);
 - permanent but capable of being mitigated by some means; or
 - permanent but with no possibility of mitigation.
- 20 Measures which could be considered to mitigate adverse effects on amenity would include:
- overlooking windows might be obscure glazed;
 - an opaque screen might be provided for a balcony;
 - fast-growing shrubs or trees might be planted;
 - a wall, fence or trellis might be erected;
 - the complainant's garden might be redesigned;
 - an acoustic barrier might be erected to mitigate noise;
 - double glazing for parts of a house affected by noise might be provided; or
 - a flue might be constructed to minimise smell nuisance.
- 21 It would not be appropriate to consider remedial action if the solution would be no better than the problem. For example, if the remedy for overlooking would produce a screen which interfered with the enjoyment of the complainant's property.
- 22 The practicability of remedial actions, and their desirability, should be discussed with the complainant before a decision is made. Where the remedial measure would take place on the development site itself, discussions with, and the agreement of, the developer would be needed.
- 23 If the injustice in whole, or in part, is a loss of light, that is best considered as a permanent effect to be remedied by compensation for loss of value. See paragraphs 25–28.
- 24 There are other kinds of injustice where financial compensation would be more appropriate than the undertaking of some particular work, or where both elements are needed. If a statutory nuisance is involved, compensation in the range of £1,000 to £2,000 a year to affected households will usually be appropriate. Where the nuisance, though not a statutory nuisance, is such that enforcement action should have been taken, then compensation in the range of £250 to £1,000 a year is likely to be appropriate.

- G Loss of value**
- 25 Where loss of amenity is permanent and cannot be remedied by other means, it should be considered a potential loss of value to the complainant's property. In these cases loss of value is a proxy for loss of amenity.
- 26 The assessment required is to compare the value of the property after completion of the development concerned and the value of the property on the basis of what the position would have been if there had been no fault. In most circumstances, the valuation should determine loss of value at the date the valuation is carried out.
- 27 The assessment should be carried out by an independent valuer commissioned by the council. This should not be a valuer commonly used by the council. The district valuer will often be an appropriate valuer.
- 28 The brief to the valuer should be informed by the Ombudsman's report if there is one, or otherwise by an assessment set out as part of the local settlement, for example. The brief should be shown to the complainant before the valuation is undertaken and any comments taken into account before the final brief is drawn up. Any dispute over the content of the brief could be referred to the Ombudsman where a complaint to the Ombudsman was involved.
- 29 Sometimes a planning permission may not be implemented within five years and would therefore lapse. But it might nonetheless have an impact on values because it would be a material planning consideration to be taken into account in determining any future application for the land. The interests of the complainant could best be safeguarded by the council annotating its records, including the planning register, to show that there was fault in the granting of permission, so that this factor could be taken into account when future applications are considered.

- H Lost opportunity**
- 30 There may be injustice that the complainant lost the opportunity to comment on, or object to, development which might adversely affect amenity or the enjoyment of property.
- 31 Where the complainant was not notified by the council of proposed development when he or she should have been, but where any objection the complainant was likely to make was made by other people who were properly notified, an appropriate remedy might be an apology by the council for its oversight.

32 However, there may be particular reasons why the complainant reasonably expected to be notified, for example where he or she had objected to a planning application but had not been notified of significant amendments to the application. In such circumstances, some compensation for outrage and lost opportunity might be appropriate. It might not usually exceed £250, including 'time and trouble'. But there might be a justification for a higher figure where, for example:

- the complainant's likely objections were not raised by other objectors;
- the factors involved in the likely objections were significant in planning terms but not taken into account by officers in assessing the application; and
- the final decision might well have been different although, even after taking account of the views of members and officers after the event, it is impossible to be certain.

33 In such cases, some compensation might be appropriate for the uncertainty of not knowing whether, if things had been done properly, a better outcome for the complainant might have been secured. This is likely to be in the range of £500 to £750, including 'time and trouble'.

J Distress

34 There may be circumstances where specific compensation for distress is needed. This may be, for example, where an inter-neighbour dispute had been caused or aggravated by some fault by the council. This is likely to be in the range of £250 to £750, including 'time and trouble'.

K Professional fees in pursuing dispute

35 Generally we do not consider reimbursement of professional fees (for example, of solicitors or planning agents) is appropriate in relation to pursuit of a complaint about the council's handling of a planning matter. However, there may be cases where it was reasonably necessary for the complainant to protect his or her interest by engaging professional help, for example if fault by the council had potentially a devastating effect on the complainant's amenity, or where matters involved were of significant complexity. It would not generally be considered necessary to reimburse fees for both a planning agent and a solicitor. And only reasonable fees should be reimbursed.

L 'Time and trouble'

36 Except where otherwise indicated, it is generally appropriate to add compensation for the time taken and trouble incurred in pursuing the complaint. See Part XI.

Part X Social services

Introduction

- 1 This section sets out illustrations of the application of the general guidelines in Part I to remedies for injustice in social services complaints. The guidance is relevant irrespective of whether complaints are handled under the statutory social services complaints procedures, or the council's corporate procedures, or partly both.

Elements in a remedy

- 2 Consideration should be given to all the potential elements in a remedy as defined in Part I. The elements which are most likely to be relevant are as follows.

A Specific action

- 3 This may be appropriate:
 - if the authority's fault has been a failure to take some action or provide some service, and this problem is continuing; or
 - if there is some practical action which can be taken to reduce or remove the injustice which some other action or omission has caused.
- 4 If a provision or service should have been made available but this has not happened, the remedy should include action to ensure that the person concerned is no longer denied this benefit. This might require, for example, within an agreed timescale:
 - an appropriate assessment of the needs of an adult, child or a carer for some provision, services or support;
 - the provision of aids or adaptations to the home of an adult or child with physical disabilities, or the completion of any adaptation works which have not been finished;
 - arrangements for any home care, day care, social work or other support the service user or carer has been assessed as needing to be provided;
 - arrangements for the complainant to have access to any information the authority holds which he or she has a right to see; or
 - investigation of a complaint or aspects of a complaint not yet investigated which the complainant wants to pursue.
- 5 Practical action to help someone affected by an authority's maladministration might comprise, for example:
 - arranging a suitable placement for a child or adult who has been inappropriately placed;
 - an agreement to commission and pay for an independent assessment of any need for counselling or other therapy the person concerned may have, to help him or her deal with psychological damage suffered as a result of maladministration and to fund the provision as appropriate; or

- if appropriate, placing a copy of an investigation report upholding a complaint as a whole or in part with the relevant case records.

6 Consideration should also be given to any practical action the complainants might suggest, for example, the creation of a memorial garden, the provision of a new play facility or the planting of a tree in memory of a child or adult who has died.

B Financial compensation

7 This may well be relevant, and the elements set out in paragraphs 8–44 below need to be considered.

8 Financial compensation may be appropriate if, for example:

- the council has taken the appropriate action but has delayed in doing so and the delay has caused injustice;
- there is no practical action which would provide a full and appropriate remedy;
- the complainant has suffered financial loss; or
- the complainant has suffered distress and anxiety.

9 Sometimes it may be appropriate to pay some compensation to a person other than the complainant who has been affected by maladministration. For example:

- a payment could be made partly to a parent and partly to a child in a family who did not receive the assistance and support the child should have had;
- similarly, a payment could be made in part to a carer and in part to an adult for whom he or she is caring;
- part of a payment to a parent or carer could be earmarked for a particular purpose to benefit a child or adult being cared for, for example, to fund college fees, social outings or a holiday;
- some part of the compensation could be put in trust for the benefit of a child on reaching majority. In the case of an adult who does not have the capacity to manage his or her own financial affairs, a trust might be set up on his or her behalf, or the Public Trust Office (the administrative arm of the Court of Protection) may already be involved;
- where a child or adult has died, a donation to an appropriate charity could be considered.

C The effect of the complainant's own actions

10 Where appropriate, compensation can take account of the effects of the complainant's own actions. Examples would be:

- where someone who complains about not being given a provision or service has not co-operated with an assessment of his or her needs;
- where an offer of a service or provision which would be a benefit was refused because the complainant wanted something more, for example, if he or she refused three hours per week home care because he or she wanted six;
- where delays in completing the investigation into a formal complaint have been caused at least in part by the complainant's failure or refusal to co-operate at some stage of the procedure, or by the complainant presenting, weeks or months after the initial complaint, a number of significant new but relevant issues which could have been included in the original complaint.

11 However, account should be taken of any factors, such as temporary or permanent physical or mental health problems or very difficult home and family circumstances, which may have prevented the complainant from improving his or her own situation or from co-operating with attempts to investigate or resolve his or her concerns.

D Money not paid to complainant

12 Money due to a complainant, such as an allowance to a foster parent, may not have been paid, or the complainant may be due a refund of charges or fees which the authority agrees have been overpaid, for example for home care, residential care or day care. In such circumstances the calculation of the amount of money unpaid as part or the whole of a remedy should normally be straightforward. In some cases interest on the payment might be justified – see paragraphs 42–43 below.

E Quantifiable loss

13 This can arise in two ways:

- the complainant may have suffered financial loss directly as a result of something the authority has or has not done; or
- he or she may have incurred reasonable costs which would not have been necessary but for maladministration.

14 Financial loss can occur, for example:

- through a faulty decision not to carry on paying for a facility (for example, telephone line rental);
- through delay or errors in a financial assessment for any care, service or provision to which a complainant is required to contribute;

- through delays in arranging home care or appropriate residential provision, leaving a complainant with no option but to arrange and finance this;
- through an employee of an authority improperly influencing a vulnerable person to dispose of money or assets; or
- through a failure either to provide advice on welfare benefits or assist someone to obtain such advice elsewhere, resulting in a loss of benefit to which there would have been an entitlement.

15 A complainant may incur abortive expenditure, for example, if he or she acted on wrong advice about work which would need to be done to the family home before foster children could be placed there.

16 Where a complainant has suffered significant quantifiable financial loss for any length of time, consideration should be given to whether interest should be paid – see paragraphs 42–43 below.

F Loss of a non-monetary benefit

17 This will often arise in social services complaints. The complaint may be that, as a result of maladministration, the complainant, the complainant's children or an adult on whose behalf a complaint is being made has been denied some provision, service or support which would otherwise have been received.

18 The non-monetary benefit may be some adaptation or equipment in the home to assist an adult or child with physical disabilities, or to improve their quality of life. Through maladministration, the complainant or person on whose behalf a complaint is being made may, for example, have continued to live in accommodation without central heating which would benefit a medical condition, have had no access to bath or shower, or have lived without access to parts of his or her home.

19 The benefit which has not been provided may be a service in the home, such as practical assistance with daily routine tasks, or day care in an appropriate centre, or practical assistance to enable the person concerned to study at college or take advantage of community or recreational facilities.

20 The complainant, or person on whose behalf the complaint is made, may have had to live at home in conditions quite unsuited to his or her needs, rather than in an appropriate residential setting, because of faults on the authority's part.

21 The non-monetary benefit which has not been provided may be social work or other professional input and support.

- 22 Quantifying the loss of such benefits can be extremely difficult. The starting point should be to identify:
- what the presenting needs of the complainant, or the person on whose behalf a complaint is being made, were at the point when some fault occurred;
 - what practical provision should have been made or what service, support or provision should have been in place to meet those needs, and how frequently;
 - what the delays or failures in making the provision or gaps in services and support were, over an identified period of time; and
 - what the consequences were for the complainant and/or the complainant's family or carer of the failures: specifically, in the absence of the provision, service or support which should have been supplied, how were the assessed needs met, if at all, and by whom.
- 23 Considering the above questions should enable an evaluation to be made of the nature and degree of the injustice resulting from maladministration.
- 24 In the absence of any other means of redress for the loss of a non-monetary benefit, financial compensation should be considered. No 'tariff' or fixed guidelines are possible, however, in view of the very wide range of injustice that may result from a failure to meet the needs of complainants in different circumstances. Each situation needs to be assessed in the light of all the relevant factors.
- 25 In considering the question of how much compensation would be appropriate in any particular case, one factor which could be taken into account is what it would have cost the authority to make the provision, or provide the service or support, which should have been received. Although the cost of a benefit and the value of it may not be the same, the cost may give a useful indication. But all the circumstances should be considered and any other relevant factors should be taken into account.
- 26 Compensation amounts are not always large. But in cases where an individual's or a family's life has been severely affected over a period of time by an authority's maladministration, the financial compensation recommended by the Ombudsmen has sometimes been significant. To illustrate, the following payments have been recommended by the Ombudsmen to, and agreed by, the authorities concerned:
- £3,000 for a complainant with physical disabilities who had no access to a downstairs toilet or shower for over two years;
 - £10,000 for the absence, over more than two years, of a substantial package of home care services;

- £2,000 for a complainant who had to live at home for nearly a year in conditions totally unsuited to her needs, rather than in the appropriate residential placement which should have been provided;
- £10,000 for a single parent with four children, some of whom had learning and behavioural difficulties, who received no social work or other support for periods totalling more than three years;
- £30,000 for the loss of two years of a suitable residential college placement for a young man with learning disabilities; and
- £80,000 for the failure to prepare a care plan for an adult with severe disabilities, and failure to provide or fund appropriate care for two-and-a-half years.

G Loss of value 27 There may be circumstances where loss of value may need to be considered, for example:

- damage to property stored or protected under the National Assistance Act;
- damage to possessions of a looked-after young person which were being stored for him or her; or
- damage caused by a community carer to household equipment.

H Lost opportunity 28 Such injustice can arise, for example:

- if a parent is not invited to a case conference or review and is denied the opportunity to contribute to plans for a child's care and future;
- if an authority does not properly investigate a complaint, or arrange an investigation under the area child protection procedures, about a child's name being placed on a child protection register, leaving unresolved the question of whether registration would have been agreed if the initial case conference had been conducted properly;
- if a person entitled to a benefit (for example, direct payments) is not informed of his or her right to apply; or
- if a complainant, whose complaint has been investigated by social services, is not provided with information about his or her right to have the complaint reviewed and is not informed about who to contact about this.

29 In cases where it is reasonably certain that the outcome would have been in the complainant's favour, that should be taken into account. If the outcome would have been by no means certain, or is unlikely to have been what the complainant wanted, any compensation is likely usually – apart from some exceptional cases – to be a relatively small sum of a few hundred pounds to reflect just the loss of the opportunity itself.

J Distress

30 This features frequently in social services complaints. The severity can vary significantly. It could be something relatively minor, like the inconvenience of having a visit the complainant has arranged to the authority's offices to inspect the information it holds on him or her postponed. Or it could be the uncertainty and anxiety caused by delays in assessing a person's needs or in investigating a formal complaint, or the anguish and grief caused by the abuse, injury or death of a child, parent or partner.

31 In considering compensation, factors to take into account include:

- the number of people who were caused distress through an authority's fault;
- how severe the distress was;
- how long it lasted; and
- whether any of those concerned were, by virtue of their physical or mental health or other circumstances, likely to have been more severely affected than people without such difficulties.

32 'Distress' as a form of injustice may not be easily separable from the consequences of a loss of a non-monetary benefit (see paragraphs 17–26 above). The distress arising from an authority's acts or omissions should, however, be distinguished from the injustice which can arise through having to devote considerable time and trouble to pursuing a complaint about such faults (see paragraphs 38–40 and also Part XI on 'time and trouble' payments generally).

33 Again, the starting point for assessing any payment to a complainant for distress should be a consideration of how that particular individual or family has been affected by specific faults. Appropriate compensation could range from £50 (for example, for a period of uncertainty about the date or outcome of an assessment) to thousands of pounds in cases where, for example, allegations of abuse made against a complainant have not been investigated properly, or action requested by a complainant to prevent children from being abused has not happened.

34 In those cases where an adult or child in an authority's care has died and relatives believe this has been caused by maladministration, no amount of compensation can make up for this. In such cases, if maladministration is identified in the events surrounding a death, it may be appropriate for the authority to make a suitable payment to a complainant or an appropriate charity, as a tangible recognition of any failings there have been.

K Professional fees in pursuing dispute

35 People making complaints about social services matters may be disadvantaged in some way and may need assistance in pursuing a complaint. A voluntary or charitable organisation may not necessarily charge for any help provided with a complaint.

36 However, in the particular circumstances of the complaint, it may be reasonable for a complainant to seek some professional assistance for which a fee will have to be paid. In appropriate cases, reimbursement of legal expenses (in whole or in part) may be considered, though this is likely to be exceptional. The complainant may have obtained help with the cost of legal fees through the Community Legal Services section of the Legal Services Commission, and if so, this should be taken into account. It may be appropriate for an authority to make a contribution towards the cost of any professional fees incurred rather than pay the whole cost if, for example, a complainant consults a solicitor before an authority's actions or omissions put him or her in a position where this seems a reasonable and justified step to take.

37 If a complainant has been using the services of a solicitor, it will be important to distinguish any charges made for work required as a direct result of maladministration from fees charged for other work, such as representation in court proceedings relating to children or at a mental health review tribunal.

L 'Time and trouble'

38 See Part XI for the general principles on which a 'time and trouble' payment might be based.

39 The 'time and trouble' payments which the Ombudsmen recommend on social services complaints are sometimes higher than the range of £50 to £250 indicated in the general guidance section. This can reflect the difficulty which a complainant with physical or mental health problems, or who is vulnerable for any other reason, may have in pursuing a complaint, but more often arises from significant delays in the processing, investigation and review of formal complaints made under the statutory complaints procedures.

40 It may sometimes be the case that no time and trouble payment is needed. This could be, for example, if the statutory timescales or an authority's own timescales for investigating complaints have been slightly exceeded because of fault by the authority, but the outcome of the complaint is that there is no benefit to the complainant. However, in cases where the investigation and review of a complaint has taken many months in excess of the relevant timescale and the complainant has been put to considerable expense and inconvenience in pursuing a complaint, a 'time and trouble' payment of up to £500 may be in order.

M Offsetting compensation

41 If a complainant owes money to the authority, for example for community care services, it will usually be appropriate to offset this against any compensation which may be payable. This can apply in relation to the authority as a whole and need not be confined to the department concerned in the complaint.

N Interest

42 In cases where a complainant has incurred expense or suffered quantifiable financial loss as a result of maladministration, or where a payment to a complainant is overdue, it may be appropriate to consider whether interest on the sum in question is needed. This could apply, for example, if a complainant's capital has been significantly diminished through having to pay fees for residential care as a result of maladministration, or if charges for several years' accommodation are to be refunded to someone who, being in receipt of aftercare under section 117 of the Mental Health Act 1983, should not have been paying such charges.

43 Interest should be calculated at a standard rate. The Ombudsmen use, and recommend that authorities use also, the rate set by the County Court.

P Formula

44 It may on occasion be appropriate to express the whole or part of a remedy as a formula which sets out how the authority should calculate the payment which will be made at the point when all the factors to be taken into account are known. For example, in one case a failure to provide a suitable residential placement for a young woman with severe physical disabilities still persisted when a report on the investigation into the complaint was published. The Ombudsman recommended that a payment of £2,000 should be made to the complainant, with a further £200 for every month of additional delay if no placement was made available within three months.

Part XI Time and trouble payments

Guidelines for a 'time and trouble' element in remedies

- 1 Consideration of the remedy should normally include consideration of whether an element of compensation should be included in respect of the time a complainant takes, and the trouble he or she incurs, in making the complaint.
- 2 Anyone pursuing a complaint can normally be expected to incur a certain amount of time and trouble and minor costs. A time and trouble payment will not therefore be appropriate in every case. It should be made only where it can be justified on the basis that the facts of the case show that time and trouble and minor costs for the complainant were more than would routinely be required for pursuing a complaint.
- 3 A time and trouble payment, where appropriate, should be some compensation for:
 - time and trouble reasonably and legitimately expended by the complainant in having to pursue the complaint with the authority and with the Ombudsman; and
 - minor items of expenditure and financial loss which are not otherwise taken into account in the compensation recommended.
- 4 Consideration of time and trouble may often not be needed if a complaint is settled quickly. For example, most school admissions complaints are by their very nature urgent. A suitable remedy for a swift resolution of the complaint may often be an offer of a place in the school concerned, or a fresh appeal, without any need for a monetary payment.
- 5 Time and trouble payments would normally fall within the range of £50 to £250, and the amount should be determined in the light of the facts of the case. In exceptional cases a higher amount could be involved.
- 6 In the assessment of the time and trouble payment, consideration should be given to all relevant factors in the case which could include, for example (though this is not an exhaustive list):
 - the passage of time, including response times by the authority in relation to the nature of the problem;
 - the amount of time and effort which the complainant had to devote;
 - difficulty experienced by the complainant in dealing with the authority;
 - the degree of inadequacy in the response of the authority to letters, phone calls and visits;

- whether the inadequate response of the authority resulted to any extent from wilful action, as opposed to poor administration;
 - the level of minor or generally unquantified expenses incurred by the complainant (such as significant post or telephone costs, travel costs) – that is, other than significant quantified expenses (for example, legal or other professional fees) which are identified as separate elements of compensation; or
 - if the complainant is acting on behalf of others (for example, a secretary of a tenants' association or one complainant pursuing a complaint on behalf of a group of complainants).
- 7 Care should be taken to distinguish, on the one hand the factors which affect the time and trouble payment and, on the other hand the elements of injustice broadly characterised as 'distress' (including stress, anxiety, frustration, uncertainty, worry, inconvenience, etc). These are different concepts and should not be confused.
 - 8 A time and trouble payment may be specified separately or the compensation may be included in a composite sum which includes time and trouble. Where such a composite sum is involved, it should be made clear that time and trouble has been taken into account.
 - 9 An element of time and trouble may be included in a compensation recommendation in a formal report finding maladministration and injustice. But consideration may also be given to a time and trouble payment as part of a local settlement.
 - 10 The amount of time and trouble payment as part of an early local settlement is generally likely to be lower than, for example, such payments included in recommendations of a formal report finding maladministration and injustice.

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