

**Guidance on good practice:**

# **Remedies**

**January 2017**

**This document replaces previous LGO guidance and key principles document issued in July 2011**

# Versions

<b>Date</b>	<b>Version</b>	<b>Updates</b>
December 2013	1	
May 2014	2	Guidance about remedying complaints where fault caused injustice to somebody who has since died added to section 3 - general guidance. The addition of this guidance has been cross checked for consistency with the subject guidance and the remedy examples.
June 2015	3	The Ombudsman will not seek to dissuade a body in jurisdiction from proposing a settlement which exceeds what we would seek and should not limit the redress offered to a person. Wording amended in section 2 - The LGO approach.
January 2016	4	Wording in Subject guidance/Adult social care section amended to take account of the Care Act 2014.
September 2016	5	The introduction, the role of the Local Government Ombudsman and the LGO approach to remedies (sections 1 and 2) revised.
January 2017	6	Ombudsman changed to Michael King

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# Introduction

The Local Government Ombudsman (LGO), in common with all other Ombudsman schemes, was established to conduct independent and impartial investigations of complaints and deliver effective dispute resolution. We do this by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the case. Over the years we have learned from what complainants have told us. They want us to remedy a complaint as soon as possible. They think it is important that local authorities and other bodies in our jurisdiction acknowledge when things go wrong and take responsibility for putting things right. Complainants often tell us they want to make sure the same problem does not occur again in the future to cause injustice to other members of the public. We take all this into account in recommending redress. Each case which comes to the LGO is different and we take the individual needs and circumstances of each complainant into account when making recommendations to remedy injustice caused by fault. But all those who use our service need to have confidence that our recommendations are consistent and fair.

**Michael King**  
**Local Government Ombudsman**

# 1 The role of the Local Government Ombudsman

We aim to remedy personal injustice wherever our investigations reveal there has been fault. There must be a clear link between any fault we find and the personal injustice to the complainant. But the remedies we recommend are not just about money: we look carefully into the root causes of problems and recommend improvements to systems where they haven't worked properly, so that others do not suffer from these same problems in future.

Sometimes we will recommend a financial payment to the person who brought their complaint to us. This might be to reimburse a person who has suffered a quantifiable financial loss, or it might be more of a symbolic payment which serves as an acknowledgement of the distress or difficulties they have been put through. But our remedies are not intended to be punitive and we do not award compensation in the way that a court might. Nor do we calculate a financial remedy based on what the cost of the service would have been to the provider.

Our final decisions on complaints are set out in writing and – in nearly all cases – published in an anonymised form on the LGO website. This includes any remedies we recommend and clear reasons explaining why those remedies were appropriate.

We check that remedies have been implemented properly: we hold the body in jurisdiction to account for completing any actions, even where the action needs to be taken by someone else who is providing a service on behalf of the body in jurisdiction. Although our recommendations are not enforceable in a court, we have powers to issue public reports to draw attention to non-compliance and we have found that it is extremely rare for a body not to comply.

Although there are some sensible controls on types of remedies (for example, we cannot recommend disciplinary action against staff), the LGO has broad discretion to recommend remedies which we judge to be suitable. This includes recommending remedies for people who may not have complained to us but might have been affected by any failings we identify.

This guidance exists to help our Investigators decide on remedies in a broadly consistent way, while still ensuring that each case is considered individually, according to the scale and significance of the injustice. Along with our other guidance, we publish it on our website in the interests of fairness and transparency, and review it regularly.

## 2 The LGO approach to remedies

- > When we have evidence of fault causing injustice we will seek a remedy for that injustice which aims to put the complainant back in the position they would have been in if nothing had gone wrong.
- > We will always take account of the views and circumstances of the complainant when proposing a remedy. We also consider the personal circumstances of the complainant and how what went wrong affected them (for example, do they have health problems which were aggravated by the failings, or did children miss school because the family was placed in unsuitable accommodation).
- > We encourage bodies in jurisdiction to offer remedies. We will take account of any offer made, and will not interfere if we consider a proposal satisfactorily addresses the injustice caused.
- > We will also consider any mitigating or aggravating actions by the complainant or any third-party which may have affected the injustice (for example, whether the complainant cooperated with the body in jurisdiction, or whether the complainant had support from friends or family which meant the impact of any failings on them was lessened).
- > Where appropriate, we will recommend an apology be made by the body in jurisdiction for fault causing injustice.
- > We will always consider what remedial action can be taken by the body in jurisdiction to remedy injustice, when the injustice arises from a failure to take appropriate action. Remedial action may include reconsideration of a decision where we consider the outcome might have been different had fault not occurred.
- > In some cases remedial action may include reimbursing the complainant (in full or in part) for actual, quantifiable financial loss which has directly resulted from the fault, for example benefits not paid and any avoidable, reasonable expenses. Professional fees may be included but complainants should not need a professional adviser to complain to us and only exceptionally do we recommend reimbursement of legal costs. Where it is appropriate to calculate interest we usually base this on the retail price index.
- > We will recommend systemic changes such as a review of practice, policy or procedure if we think it is likely further mistakes may affect others in the future. This might include, for example, improved communication systems between departments, staff training on the impact of new legislation or a reassessment of the needs of disabled residents.

## 2 The LGO approach to remedies

- > When it is not possible nor appropriate for remedial action to be taken (for example due to the passage of time) then we will consider asking for a payment to acknowledge the impact of the fault in terms of loss or harm. These payments usually fall into two categories:
  - acknowledgment of a loss of non-monetary benefit (such as education or amenity); or
  - acknowledgment of avoidable distress, harm, risk or other unfair impact of the fault. This can include uncertainty, raised expectations, lost opportunity and outrage.We can also take account of the time and trouble associated with making the complaint (see general guidance section).
- > When a payment is recommended we will always consider any contextual circumstances such as making a payment in trust for a child, or for a particular purpose, or offsetting against any debt owed to the body in jurisdiction. We may also recommend a payment for someone who had to provide help or support to a complainant because of a body in jurisdictions failings (for example a carer who had to provide continuous care for a period without any respite).

### Key questions in recommending a remedy

- > What outcome does the complainant want to achieve by complaining?
- > What has gone wrong?
- > What is the personal injustice?
- > Can action be taken to put the person affected back in the position they would have been in if nothing had gone wrong?
- > Is there an actual quantifiable financial loss, such as costs incurred or payments not received?
- > On what basis can loss of non-monetary benefit be calculated?
- > How severe was any other impact in terms of distress, harm or risk?
- > Did the actions or inactions of the complainant or a third party contribute to or lessen the injustice?
- > Is there a more appropriate form of payment than cash (e.g. trust fund, annual leisure card)?
- > Overall, is the remedy proportionate, appropriate and reasonable?

## 3 General guidance

**This section sets out the general principles which we follow in assessing remedies, and those parts of a remedy which are common to all complaints.**

There must be a clear and direct link between the injustice we are remedying, and the fault we have identified. We do not recommend a remedy where there is fault, but no injustice. We do not recommend a remedy where injustice arose from circumstances unconnected to fault.

The remedy needs to be proportionate, appropriate, and reasonable. Similar remedies are appropriate for similar cases but we have to consider each case on its own merits in light of the particular circumstances.

**Our key principle is that the remedy should, as far as possible, put the complainant back in the position he or she would have been in but for the fault we have identified.**

If this is not possible, financial redress may be the only available remedy. Financial redress should always be linked clearly to the identified injustice.

We will always take account of the views of the complainant and the body in jurisdiction about putting matters right. But we have to arrive at our own decisions about what would be a fair remedy.

### Apology

Bodies in jurisdiction should apologise where fault has caused injustice. The body in jurisdiction may apologise in person or in writing, but in either case the apology must be made directly to the person affected using clear and plain language. It should not minimise or express any doubt about what happened: to be meaningful, it must both accept responsibility for the fault, and acknowledge the impact this had on the complainant. An apology should also include an assurance that the same fault will not happen again, and explain what steps have been taken to ensure this.

Responsibility for making the apology rests corporately with the body in jurisdiction. So we will not normally seek an apology from a specific officer.

### Review of policy and procedure

Bodies in jurisdiction should have in place policies and procedures that reduce the likelihood of mistakes, and minimise the impact if mistakes are made. Where we have found fault causing injustice, this may suggest those policies and procedures are inadequate. So a remedy may include a recommendation for a review of the body in jurisdiction's procedures or policy. Such a review should also consider whether others have been similarly affected, if the outcome of our investigation suggests this is likely. Where we know the body in jurisdiction has already carried out or agreed to conduct a review, we recognise this in our decision.

In any event, it is important the complainant is reassured that the body in jurisdiction has learnt from the complaint. So the body in jurisdiction should share the outcome of the review with the complainant. This may take the form of an action plan with indicative timescales.

If our investigation has already identified the relevant fault in policy or procedure, a further review may not be necessary. We may instead make a specific recommendation for change.

Our investigation may also show that satisfactory policies and procedures exist, but staff were either not aware of them or did not properly apply them. Under those circumstances we may recommend staff training.



## 3 General guidance

### Remedial actions

Practical action may provide all or part of a suitable remedy. When the injustice stems from failure to take some specific action, taking that action as quickly as possible may be a straightforward remedy.

Other recommendations made may depend on specific action being taken first, such as an inspection or an assessment. Our recommendations need to make clear that the body in jurisdiction should do this first. If the outcome is that no further services or actions are necessary, then the injustice is remedied. But if further services are needed, there may be further injustice requiring a further remedy, for example acknowledgment of the delay in providing those services.

In other cases practical action may mitigate the injustice. The subject guidance gives examples for specific areas of complaint.

Sometimes the complainant and the body in jurisdiction need to maintain an on-going working relationship – for example, if the complainant is an adult care services user – but this has been seriously damaged by the fault we identify. In such cases the remedy may include a recommendation for the body in jurisdiction to arrange independent mediation to repair the relationship.

### Quantifiable financial loss

Where the body in jurisdiction has failed to pay money due to the complainant, we may include a recommendation for that sum to be paid in the remedy. But complainants can be affected by such a fault in different ways and our recommendation will take account of this.

- > A complainant may not be able to meet a particular cost, and so may accrue a debt, such as rent arrears, as a result of the fault. Backdating the payment will normally pay off the debt in full or bring it down to a level below the normal threshold for recovery action or eviction. We may also include in the remedy a recommendation to refund the costs (such as summons costs) associated with the debt. We will also consider the degree of distress caused to the complainant by unnecessary recovery or repossession action.
- > A complainant may need to borrow money to meet costs, so backdating the payment may not completely remedy the injustice. In such cases, we will take account of the costs of borrowing in our recommendation for a remedy. We will also consider what other options were available to the complainant and take a view on whether the complainant could have borrowed money more cheaply. For example, it is usually cheaper to arrange an overdraft than to take out a short-term loan, but not all complainants can access an overdraft.
- > A complainant may pay for a service privately. This injustice amounts to a quantifiable financial loss which can be remedied by a straightforward reimbursement.
- > A complainant may have been without services during the period of fault – usually care services – which would have been bought using direct payments. The remedy for this depends on the level of injustice caused by not having these services, and should be assessed in line with our guidelines on distress and harm. This may amount to more than the value of the direct payments, if a particularly vulnerable complainant had critical needs and no alternative support. It may amount to less, if needs were met by friends and family (although they may have their own, separate injustice as a result).

## 3 General guidance

- > A complainant may meet costs, which would have been covered by a payment from the body in jurisdiction, by making economies which should not have been necessary. This is particularly likely to be the case where the money owed was an allowance for looking after a child.
  - A fostering allowance recognises the skills and experience of the foster carers, but is mainly intended to meet the day-to-day costs of giving a home to a child. Backdating the allowance reimburses the expenses which occurred during the period the allowance was not paid. It also allows the complainant to buy items (such as new clothes) which he or she could not afford to buy during this period.
  - Adoption and special guardianship allowances are slightly different because they are based on the carer's requirement for additional support to meet the child's needs. They are sometimes still, effectively intended to meet the costs of giving a home to a child, and in such cases the allowance should be backdated.
- > Where adoption and special guardianship allowances are in place to allow for additional support services to meet the particular identified needs of the child, the injustice and therefore the remedy may be different.
  - If such services were bought privately, it may be more appropriate to recommend a straightforward reimbursement.
  - If such services were missed altogether, the injustice is the impact of being without the services. It may be appropriate to recommend that extra services are put in place now (for example, a holiday play-scheme where a family could not benefit from respite care).
  - But arranging extra sessions at a later date may not be in the best interests of the child, and if the child is no longer living in the placement, the benefit of the services lost to the family cannot be recovered. The impact of the fault should in these circumstances be considered as avoidable distress, and the remedy for the injustice will usually be a payment in line with our guidelines on distress. This may amount to more or less than backdating the allowance, depending on the circumstances of the case.

Where the body in jurisdiction has failed to pay money due to the complainant, and we include a recommendation for that sum to be paid in the remedy, there may need to be an interest calculation. We will not normally consider including interest in the remedy unless the period of delay was more than six months, and the payment itself is more than £1,000. We usually base the calculation of interest on the average retail price index for the period (unless prescribed otherwise by law in relation to a specific matter).

Where the complainant has paid for a service but the body in jurisdiction has failed to provide the service, either at all or to an acceptable standard, a remedy may include the refund of all or part of the complainant's expense. The level of refund will reflect the difference between the service provided and the service paid for. This may be a straightforward calculation if the service was not provided at all. But where the service was provided in part, or to a standard below that expected, we take account of this in assessing a fair refund.

The complainant may have incurred avoidable expenses for items such as travel to school or extra help at home. If we decide these expenses were reasonable, and arose directly as a result of the fault we have identified, then we may include a refund in the remedy. Again, there may need to be an interest calculation.

## 3 General guidance

Avoidable expenses may include professional fees, taking into account the following:

- > Complainants usually do not need a solicitor or other professional adviser to help them make a complaint to the LGO. So we are unlikely to recommend that fees for this purpose should be reimbursed unless there are exceptional circumstances.
- > There may be circumstances where it is reasonable for a complainant to have engaged legal help in a matter, particularly where it is highly complex. In such cases, we may consider recommending a remedy to reimburse costs which directly and necessarily flow from the fault identified. We will not do this where costs were wholly covered by the legal aid scheme and the complainant has no personal liability.
- > We may recommend a contribution to costs rather than a refund of all the expenses. If we consider the amount of professional advice commissioned was disproportionate, or not all the advice arose from the identified fault, our recommendation will reflect this.
- > Costs about expert assessment in relation to a statement of special educational needs can be recovered at tribunal if the body in jurisdiction has acted unreasonably. Parents can use this route to recover costs even if issues around the content of the statement and the placement have been resolved, and we would normally expect them to do so.

A reduction in property value is usually quantifiable, but expert advice is necessary to arrive at a figure. This is covered in more detail in the section on planning complaints.

Loss and damage to personal property can also be quantifiable. We do not usually investigate complaints where the claimed injustice wholly or mainly relates to such loss or damage, because such a dispute can be remedied through the courts (or by the body in jurisdiction's insurers). But occasionally loss or damage may be taken into consideration when it arises from a wider investigation. In such cases, the actual cost of replacing or repairing an item is something we can include in the remedy. Where an item is irreplaceable because of its sentimental value then the injustice may be distress, rather than actual financial loss.

### **Financial redress: acknowledgement of loss of non-monetary benefit**

The subject guidance which follows identifies the:

- > benefits and services which may be lost;
- > general range in which payments are likely to fall; and
- > factors to consider when assessing the remedy.

### **Financial redress: acknowledgement of avoidable distress, harm, risk, or other unfair impact**

We expect bodies in jurisdiction to treat people fairly and with respect, and not to expose the public to unnecessary distress, harm or risk as a result of their actions or inactions. Such injustice cannot generally be remedied by a payment, so we usually seek a symbolic amount to acknowledge the impact of fault on the complainant. The amount depends on the circumstances of the case.

## 3 General guidance

### Distress

Many, perhaps most, complainants that come to us describe the distress they have experienced because of their complaint. 'Distress' can include:

- > uncertainty: if, even after taking a view on the balance of probabilities as to the likely outcome, there is still doubt about how the outcome might have been different;
- > raised expectations: if the body in jurisdiction's actions led the complainant to (wrongly) believe that certain actions or benefits would follow;
- > lost opportunity: where the complainant was deprived of an opportunity to take action or influence events, and it is likely the final outcome would have been different but for this omission;
- > outrage: where the complainant has been treated significantly unfairly or the body in jurisdiction showed a disregard for proper procedures; and
- > undue significant stress, inconvenience and frustration.

We must be clear that it is *avoidable* distress arising from fault by the body in jurisdiction which we are recognising with a remedy.

When we assess distress, we consider the complainant's individual circumstances (such as their state of health and age). In reaching a view on remedy we will consider the complainant's own assessment of the degree of distress or inconvenience they have suffered. But we also understand that some complainants may understate the degree of distress or inconvenience they have suffered, while others may overstate the position.

The same fault could lead to different remedy payments, depending on its consequences and the other circumstances of the case. Our recommendation for a remedy needs to reflect 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 relevant professional opinion about the effects on any individual.

A remedy payment for distress is often a moderate sum of between £100 and £300. In cases where the distress was severe or prolonged, up to £1,000 may be justified. Exceptionally, we may recommend more than this. We do not generally recommend a payment to remedy outrage, if this is the only injustice arising from the fault.

## 3 General guidance

### Harm or risk of harm

Where the complainant claims injury or harm to health as the main injustice, this is usually a matter for the courts to decide. But sometimes it is appropriate to acknowledge the impact of the fault has included harm, or risk of harm. Such harm, or risk of harm, can arise when the complainant, because of fault by the body in jurisdiction, did not receive services intended to provide protection. In general, harm or risk of harm needs to be considered in the same way as distress:

- > the severity of the harm or risk of harm;
- > 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 more severely than most people; and
- > any relevant professional opinion about the effects on any individual.

Where fault by the body in jurisdiction exposed a complainant to the risk of harm (rather than actual harm), a remedy payment of up to £500 will usually be an appropriate acknowledgement of the impact of the fault. Where the risk was significant, or harm actually occurred, a remedy payment of up to £1,500 may be recommended to acknowledge this. Exceptionally, if there was significant actual harm over a prolonged period, we may recommend more.

### Time and trouble

There is inevitably time and trouble involved in bringing a complaint. But this only generally requires a remedy when there has been a fault in the way the body in jurisdiction considered the complaint, which meant the complainant incurred time and trouble above what is considered usual. For example the:

- > body in jurisdiction repeatedly refused to consider the complaint;
- > complainant had to ask a councillor or MP to help, before the body in jurisdiction would consider the complaint;
- > body in jurisdiction spent several months considering the complaint multiple times at the first stage of its complaints process, instead of progressing the complaint to a higher level; or
- > body in jurisdiction did not consider the conclusions and recommendations of an independent investigation into the complaint.

In cases like these, if the body in jurisdiction had acted without fault it could have resolved the complaint without involving the LGO. So those circumstances justify a payment for time and trouble.

The remedy payment for time and trouble is unlikely to be less than £100 or more than £300. It should be adjusted to reflect the degree of extra difficulty experienced by the complainant, and any factors which make the complainant vulnerable. We do not recommend repayment of the actual costs (such as postage and phone calls) associated with making a complaint.

## 3 General guidance

### The complainant's actions and circumstances

Where a complainant's actions or inactions affected the outcome of events, we will take account of this in the remedy. Examples include:

- > delay in providing information requested by the body in jurisdiction;
- > pursuing a complaint in unreasonable and excessive detail; and
- > failing to take up an offer of provision which partly met the complainant's needs, while the body in jurisdiction considered an application for a higher level of provision.

We will also take account of the complainant's circumstances. A disability or condition may make a complainant less able to cope with the impact of the fault we have identified. If so, our recommendations for the remedy will reflect this.

### Contextual circumstances

Others may have been affected by the body in jurisdiction's fault. If there is evidence to suggest this, we usually recommend the body in jurisdiction identifies those similarly affected by its fault and offers an appropriate remedy for the injustice this caused. We may also ask the body in jurisdiction to tell us what action it has taken. But in some cases it may be in the best interests of those affected for the LGO to investigate the impact and recommend a remedy.

It may be appropriate to express a remedy not as a sum of money, but as a formula which sets out how the body in jurisdiction should calculate the payment – for example, the difference between the allowance that was paid, and the allowance that should have been paid, multiplied by the period of the fault. Where relevant, a formula needs to include reference to any continuing injustice so that the formula encompasses the future as well as the past.

Where a complainant owes the body in jurisdiction money, it is reasonable for the body in jurisdiction to offset a remedy payment against the debt, unless the:

- > debtor is a parent or household, and the payment is to remedy injustice to a child;
- > remedy payment is intended for a specific purpose, for example to buy equipment which the complainant needs, which would be lost if it were instead used to offset debt; or
- > complaint itself is about the body in jurisdiction offsetting a payment against a debt, and we have found the body in jurisdiction at fault for doing this. However, other parts of the remedy (such as a remedy payment to acknowledge distress) could still be deducted from the debt.

## 3 General guidance

Sometimes it may be appropriate to make part of a remedy payment to someone other than the complainant, who has also suffered injustice. For example:

- > the remedy payment could be made partly to a parent and partly to a child;
- > part of the remedy payment could be earmarked for a particular purpose for the benefit of a child or other person; or
- > if the complainant is making the complaint partly or wholly on behalf of other people, the remedy payment could be paid to those other people.

Where the person affected by the injustice was a child, some or all of the remedy payment could be put in trust until the child reaches adulthood.

### **Remedying complaints where fault caused injustice to someone who has since died**

If there is clear evidence of a quantifiable financial loss arising from the fault, we will normally recommend a financial remedy that repays that loss to the deceased person's estate. For example, where the deceased person:

- > paid care home fees which should have been paid by the body in jurisdiction;
- > paid for a service but did not receive that service; or
- > was entitled to housing benefit but because of processing delays did not receive it before they passed away, and they met their rent responsibilities out of their own funds.

However, where the injustice is less tangible, for example distress, harm, risk, or another unfair impact of the fault, we will not normally seek a substantive remedy in the same way as we might for someone who is still living. We would not expect a public or private body to make a payment that would enrich a person's estate.

Nor do we recommend paying a token payment to a nominated charity or to help fund a memorial to the deceased person, to remedy injustice to that person. But such action may remedy injustice to the person bringing the complaint to us (usually a family member or next of kin). Recommendations to remedy personal injustice to others affected by the fault should be in line with this guidance.

## 4 Subject guidance

The subject guidance on the following pages is neither prescriptive nor comprehensive. It aims to illustrate some common situations and highlight the approach the LGO takes, in order to promote consistency wherever possible.

For joint investigations with the Parliamentary and Health Service Ombudsman, and the Housing Services Ombudsman, we take account of this guidance in arriving at a remedy for those parts of the complaint which fall within LGO jurisdiction.



### Assessment of need

Councils must assess the social care needs for any adult with an appearance of need for care and support, regardless of whether or not the local authority thinks the individual has eligible needs or of their financial situation (see Care and Statutory Support Guidance - October 2014).

Assessments should identify what needs an individual has and what outcomes they are looking to achieve to maintain or improve their wellbeing. Assessments must consider if an individual has needs arising from a physical or mental impairment or illness; whether as a consequence they can achieve various specified outcomes (for example, being unable to maintain personal hygiene) and what impact this has on wellbeing. Where an individual is unable to meet two or more of the specified outcomes and this will have a negative impact on wellbeing the council must consider how those outcomes will be met. This will usually mean the council proceeds to draw up a care and support plan with the individual which will identify outcomes to prevent harm. Carers are also entitled to an assessment of need and similar national eligibility criteria apply.

Assessments are therefore crucial in determining what needs an individual (and/or their carer) has, and whether the council is under any obligation to provide services to meet those needs. Faults in this area could affect whether someone receives a service they are entitled to, or result in needs being overlooked.

Councils also have particular duties to meet the needs of individuals leaving hospital after being detained under the Mental Health Act 1983. Failing to meet these duties can result in people not having their social care needs met after discharge.

Remedies the LGO may recommend include:

#### Remedial action

Carry out a fresh assessment of need, or review the previous assessment. This could be by an independent social worker where poor practice by the council has caused a breakdown of trust with the complainant.

#### Contextual circumstances

- > There may also be injustice to those who have had to 'step in' temporarily, and have lost earnings or used up holiday to do so.
- > Those leaving hospital after being detained under the Mental Health Act 1983 are often among the most vulnerable of complainants.

## Care or support plans, and provision of care

After an assessment of need and eligibility, if an individual is eligible to receive services from the council, it must provide that individual with a care or support plan to show how their needs will be met. Effective care planning is essential in ensuring that individuals have their needs met. It is also essential that care providers follow those plans. The Care and Support Statutory Guidance (October 2014) contains extensive guidance on care and support planning and what such plans should contain.

Remedies the LGO may recommend include:

### Remedial action

- > Review or amend care plans, to reflect the individual's needs and explain in detail how those needs will be met.
- > Put in place arrangements to provide care where it has broken down.
- > Review of care provider.

## Care providers

There are some overlaps with the other adult social care sections, particularly safeguarding. And there will be times when a complaint about a provider is registered against the council, because the council (rather than the service user) has commissioned the care.

Care providers have a duty to provide quality care in line with regulatory standards, and to provide clear information to those paying for care about the services they are buying, the charges that will be made, and how often charges will be reviewed.

Remedies the LGO may recommend include:

### Remedial action

- > Review contract to make it clearer.
- > Review policies to check all required policies are in place, up to date, and followed in practice.
- > Waive or refund fees, or delay in implementing an increase so the complainant can plan for this.

### Contextual circumstances

- > Often relatives link an incident of failure in care to the subsequent death of, or other serious harm to, the service user. We cannot usually conclude that such a link exists. But we may consider the distress arising from uncertainty to be an injustice which can be acknowledged by a symbolic payment.
- > If there has been a breach of a specific standard which we think needs to be highlighted more widely, we will normally send a copy of our final decision to the regulatory body, the Care Quality Commission.

### Charging

After assessing need and planning on how those assessed needs can be met, the council must also assess if individuals should pay towards the cost of services. It must carry out financial assessments following guidance contained in the Care and Support Statutory Guidance (October 2014). The council also does this when residents in care homes change from private to public funding. Individuals can be caused distress if not properly advised on the requirement to make a financial contribution towards care or if decisions are poorly communicated. Mistakes by councils during financial assessment can cause financial loss to individuals and sometimes their families.

Councils have particular duties to meet the needs of individuals leaving hospital after being detained under the Mental Health Act 1983. Failing to meet these duties can result in people wrongly being charged for after-care services.

Remedies the LGO may recommend include:

#### Remedial action

- > Reassess financial contributions due, backdating the assessment where appropriate. This may mean seeking independent advice if the disputed issue is complex.
- > Write off outstanding charges where an invoice arises from fault.
- > Place a hold on recovery of disputed sums to enable the dispute to be resolved.

## Mental capacity

Complaints can arise where it is not clear if an individual has capacity to make decisions about their care. Councils must follow the law set out in the Mental Capacity Act 2005 to decide if individuals can make choices about their care and may need to carry out an assessment of capacity if there is doubt. They should only intervene where individuals are assessed as lacking capacity and a decision needs to be made in their 'best interests'.

Restrictions placed on people because they lack capacity may need to be considered against 'Deprivation of Liberty' safeguards. Failure to follow the law in this area may lead to people being wrongly denied choice about their care or denied basic freedoms. It can also lead to individuals who do not have capacity being left in potentially unsuitable or vulnerable situations, causing distress both to them and to their family members. Capacity can vary over time and an assessment may become outdated.

Remedies the LGO may recommend include:

### Remedial action

- > Carry out a fresh assessment of capacity; this could include the involvement of an Independent Mental Capacity Advocate to help inform the council's decision making.
- > Consult the complainant's family as part of a 'best interest' decision-making process (it may also be appropriate to consider whether some disputes about relatives' best interests can be resolved through the Court of Protection).
- > Carry out a fresh assessment of need, once capacity is established.
- > Take action to address potential deprivation of liberty through consideration of the 'Deprivation of Liberty' safeguards.

### Contextual circumstances

- > Others may also have been affected if a wrongly-made decision meant they were not able to visit the complainant.
- > There may also be injustice to those who have had to 'step in' temporarily, and have lost earnings or used up holiday to do so.

### Personalisation (self-directed support)

Personalisation is a social care approach to ensure that every person who receives support will have some choice and control over how their assessed eligible needs will be met. Councils allocate the amount of funding to meet an individual's need by way of a 'personal budget'. Councils may use a formula (or 'resource allocation system') to calculate this, but can approve a higher amount. The individual can then have a say on how their needs will be met from that budget and if they want the council to provide services or to buy their own service through a 'direct payment'. Councils must also make it clear that direct payments do not have to be accepted and should discuss with recipients what to do if they no longer wish to receive them.

Individuals can be disadvantaged if councils do not have proper systems in place to support personalisation. They can lose choice and control over how they want services to be delivered. Moving on to direct payments can also cause confusion and misunderstanding about the council's role if the process is not clearly explained. Direct payments place obligations on the individual which can be the cause of dispute if not properly understood.

Remedies the LGO may recommend include:

#### Remedial action

- > Reinstate council-provided services if withdrawn inappropriately.
- > Reinstate direct payments withdrawn inappropriately.
- > Initiate direct payments if there has been a delay in arranging them.
- > Provide clear information about the responsibilities of the complainant as an employer.

#### Quantifiable financial loss

Reimburse money used to pay for care services which should have been covered by direct payments, with a calculation for interest where appropriate.

#### Acknowledgement of impact

Although direct payments are a monetary benefit, they are allocated to fund specified care services. A recommendation for a payment to acknowledge the disruption, inconvenience and distress caused by not having the care services may be appropriate.

#### Contextual circumstances

There may also be injustice to those who have had to 'step in' temporarily to provide unpaid care, and have lost earnings or used up holiday to do so.

## Safeguarding

By law, councils must have procedures in place and co-operate with other agencies (such as the NHS and police) to investigate allegations of abuse against vulnerable adults. Local authority social services departments have the lead responsibility for safeguarding. Complaints may be made by those who allege abuse and also by those who have been subject to allegation. A failure to have robust procedures in place could result in action not being taken to safeguard the vulnerable adult. Poor communications can also cause unnecessary distress and uncertainty both for individuals alleging abuse and alleged perpetrators.

Remedies the LGO may recommend include:

### Remedial action

- > Start or review a safeguarding investigation where there has been procedural fault in the initial investigation.
- > Put statements on file where alleged perpetrators may not have had the opportunity to put their version of events to the council.
- > Publicly confirm the final outcome, where a flawed or delayed investigation has led to loss of reputation affecting the complainant, and the new finding exonerates the complainant.

### Contextual circumstances

Payments to acknowledge harm or the risk of harm should reflect the vulnerability of the complainant.

## Benefits and discretionary housing payments

Faults in this area can cause financial hardship. They can also cause complainants to incur rent arrears and be placed at risk of eviction. Complainants may also face financial hardship and recovery action while waiting for decisions on council tax reductions, discretionary housing payments, or payments from local support schemes. Faults in this area can also affect landlords.

Remedies the LGO may recommend include:

### Remedial action

- > Determine a claim without further delay.
- > Consider a fresh application for benefit or other payment or reduction, by an officer not previously involved with the case, and issue a decision within four weeks or sooner.
- > Restore review or appeal rights.
- > Forward a delayed appeal to the Tribunals Service within four weeks or sooner.
- > Stop recovery action or repossession until a claim has been determined.

### Quantifiable financial loss

- > Reimburse interest incurred on loans the complainant has had to take out to cover a period of delay in determining a claim.
- > Where benefit was paid to the tenant instead of to the landlord, and the tenant cannot now be traced, pay the equivalent amount to the landlord.
- > Refund summons and court costs where such action has been taken before the outcome of a claim or appeal is known.

### Contextual circumstances

- > Injustice caused by delay in dealing with an appeal may not be clear until the outcome of the appeal is known. It will be greater if the appeal is upheld than if it is unsuccessful. But delay is likely to cause anxiety regardless of the outcome of the appeal.
- > Distress arising from ongoing court action while a complainant's true financial position is unknown should be assessed in line with general guidelines on distress. Receipt of a Notice Seeking Possession will generally be at the modest end of the range, whereas an avoidable eviction is likely to merit a significant payment. But this is not a tariff – all circumstances will be relevant.
- > If an avoidable eviction results in homelessness then the remedies in that section may also apply.

## Recovery of debt

Councils are entitled to take recovery action for money owed in connection with rent, council tax, parking penalties, and other charges. But such recovery action should be proportionate to the debt, and take account of the vulnerability of the complainant. Recovery action should also normally be suspended while a benefit claim is being determined, an appeal is underway, or a complaint is being investigated, the outcome of which could affect the debt being recovered.

In most cases, the council confirms the debt in court and then passes the debt to bailiffs to recover. Failures in communication, including passing a complaint between council and bailiffs without actually addressing it, can cause significant additional distress and time and trouble.

Action by bailiffs – whether in the form of a letter, visit, or removal of goods – is likely to cause distress even where there is no fault. Where that distress was avoidable, because bailiff action occurred as a result of council fault, or greater than it should have been, because of fault by the bailiffs, this additional distress should be remedied.

Remedies the LGO may recommend include:

### Remedial action

- > Provide the complainant with clear information about the debt, how it arose, and how it has been calculated, showing how their payments have been allocated.
- > Suspend recovery action.
- > Void the recovery process and restart it from the point at which fault occurred.
- > Recalculate the debt, after removing any costs wrongly incurred, and make a new payment plan.

### Quantifiable financial loss

- > Refund summons and court costs where such action has been taken before the outcome of a claim or appeal is known.
- > Refund payments wrongly obtained when recovery action continued despite an ultimately successful appeal being underway.
- > Reimburse costs of buying items to replace those removed by bailiffs.
- > Reimburse costs of buying items to replace those sold to pay the debt and avoid escalation of recovery action.

### Contextual circumstances

- > A council has a responsibility to remedy any injustice arising from fault by bailiffs acting on its behalf.
- > Payments for distress associated with unnecessary court or bailiff action will usually fall in the 'modest' range of £100 to £300. But distress may be greater if action continues for more than a few weeks or includes removal of goods, or if the complainant is particularly vulnerable.



## Adoption and fostering

Faults in adoption and fostering services primarily affect adoptive parents and foster carers, and the children they care for. But they can also affect birth parents. All can lose confidence in the council to provide appropriate services or respond to their concerns.

The placing authority normally retains responsibility for providing support to adoptive parents and adopted children for three years after the Adoption Order is made. After this, the home authority is responsible. But financial support by the placing authority can continue beyond three years. Lack of support can contribute to the breakdown of placements and may have a significant impact on a child in both the short and long term.

The placing council is responsible for the management and supervision of its foster carers, and for paying fostering allowances. Faults in these areas can make caring for a child more difficult and contribute to placement breakdown. We also consider complaints about procedural fault during the investigation of allegations or concerns about the quality of care.

Remedies the LGO may recommend include:

### Remedial action

- > Provide the services, assessments or reviews the complainant or child should have received.
- > Consider providing extra services to make up the loss.
- > Reinstate allowances.

### Quantifiable financial loss

- > Backdate allowances.
- > Reimburse out-of-pocket expenses met by the complainant while allowances were not paid. If allowances are reinstated and backdated, this should cover such costs. But it is not always appropriate to do this.

### Contextual circumstances

If there is evidence of service failure, send the final LGO decision statement to the Chair of the Adoption or Fostering Panel. It may also be appropriate to request that a copy of the decision statement is kept on the child's care file, so that he or she can see it in the future.

## Child protection

A council has a legal duty to investigate where it has reasonable cause to suspect that a child is suffering or at risk of suffering significant harm. The council's primary responsibility is to safeguard the welfare of the child. Carrying out its duties is inevitably going to cause some distress to those involved. The LGO can only remedy injustice arising from faults in the process. In some cases injustice will be minor and short-lived. For example, the council may have already remedied the injustice by apologising, and recording and taking account of the complainant's views, or correcting the record. In these circumstances the LGO is unlikely to recommend any further remedy.

Where a child has suffered harm, or was at risk of harm, because of failings in the child protection process, this can be remedied in line with our general guidance.

Remedies the LGO may recommend include:

### Remedial action

- > Place a note on the file that lists errors, or makes clear the complainant's dissent, where records are disputed, and it is possible that professionals or the child could in the future form an unfair view of the complainant based on those records.
- > Make a clear record of the outcome of the child protection investigation and inform other agencies involved of the outcome.
- > Where families have been separated for longer than necessary, specific action such as counselling may be more appropriate than a remedy payment for distress.

### Contextual circumstances

- > In complaints involving children of sufficient maturity and understanding we should take account of the child's view of injustice and remedy, if this can be obtained without causing further distress.
- > In cases of young people aged 16 plus there may be grounds to consider paying all or some of a financial remedy direct to them.
- > Others in the family group may also have been affected by the identified fault.

## Children in care and leaving care

There is detailed guidance available about how a council should look after children in its care and on leaving care. Decision making about placements must be made in the context of the child's long-term need for stability and permanency. Changes to a looked-after child's (LAC) placement should be made at a statutory LAC review unless there is an emergency requiring the council to move a child in their best interests.

Assessing the injustice to the child can be difficult because the effects on a child of a council's faults may not be fully visible until the child is an adult, and may be clouded by the effects of the actions of others (such as parents or relatives). But, despite this difficulty, it is important to consider both the short-term injustice and any potential long-term injustice to the child.

Remedies the LGO may recommend include:

### Remedial action

- > Provide the services, assessments, or reviews the child should have received.
- > Consider providing extra services to make up the loss.
- > Provide clear information about the support available to a child leaving care.

### Quantifiable financial loss

Backdate allowances.

### Contextual circumstances

- > In complaints involving children of sufficient maturity and understanding we should take account of the child's view of injustice and remedy, if this can be obtained without causing further distress.
- > In cases of young people aged 16 plus there may be grounds to consider paying all or some of a financial remedy direct to them.
- > Remedies for homelessness and lost education may also apply, particularly for a child leaving care.
- > It may be appropriate to request that a copy of the decision statement is kept on the child's care file, so that he or she can see it in the future.
- > Faults here affect primarily the children involved but also sometimes the birth parents, family carers, foster carers and adoptive parents.
- > We do not generally recommend a remedy for the complainant's time and trouble in completing the statutory complaints procedure, unless this has been affected by significant delay.

## Special guardianship and kinship care

The principle of maintaining family ties is embedded in legislation, and often relatives offer to step in to support children whose parents can no longer provide appropriate care. Special guardianship and kinship (or 'family and friends') care allows such children to live with people they have a connection to and may already know. Special guardianship requires a court order, which usually sets out the support the child's home authority will provide; carers with a special guardianship order can ask for a review if circumstances change later. Kinship care should involve the council in carrying out a foster carer assessment and providing appropriate support to the carers and the child, as it would for other foster carers. Councils should provide detailed information about the child's background and the reasons for seeking a placement, as relatives are not always aware of this.

Faults can include delay, but also acting in haste, without properly assessing the suitability of kinship carers or properly planning the placement, which can contribute to placement breakdown. This can cause a significant degree of distress to all involved, which can be magnified by the family connection. Councils sometimes wrongly take the view that a kinship care placement is a private arrangement requiring no support.

There can also be faults along the same lines as those about adoption and foster care, and looked after children. But the impact may be greater where special guardians and kinship carers have children of their own. There can also be significant financial implications if the family has had to move or extend their home to accommodate the additional children placed with them, and the placement breaks down.

Remedies the LGO may recommend include:

### Remedial action

- > Provide clear information about the roles and responsibilities of carers and the council.
- > Provide clear information to carers about the background and needs of the child.
- > Carry out or review:
  - assessments of the placement;
  - the complainant's eligibility for financial support;
  - arrangements for contact with birth family;
  - the child's needs.
- > Provide services already identified in assessments.
- > Consider providing extra services to make up for missed ones or if there will be a delay in accessing some services (such as therapy).
- > Pay or reinstate allowances.

### Quantifiable financial loss

- > Backdate allowances.
- > Reimburse out-of-pocket expenses met by the complainant while allowances were not paid. If allowances are reinstated and backdated, this should cover such costs. But it is not always appropriate to do this.

## Special guardianship and kinship care cont...

There can be significant financial loss if a council continues to recover an interest-free loan which was intended to be repaid from allowances that have now been discontinued and cannot be reinstated. If a legal charge is put on the property for the full loan, payments made can be reimbursed.

### Contextual circumstances

Others in the family group may also have been affected by the identified fault.

## Education out of school

The council has a statutory duty under S19 of the Education Act 1996 to provide full-time education where a child cannot attend school because of exclusion, medical reasons, or 'otherwise'. Councils usually expect schools to arrange off-site provision in the first instance, but the duty to provide full-time education remains with the council. There may be an overlap between SEN, admissions and S19 requirements in some cases.

In assessing the remedy we should take account of any provision made or offered. This may not be full-time suitable education. But generally part-time provision should be on a temporary basis, for exceptional and documented reasons, and part of a programme to return the child to full-time education.

Remedies the LGO may recommend include:

### Remedial action

- > Review level and suitability of provision.
- > Provide additional tuition or equipment.
- > Identify a suitable school place and arrange admission, under the local Fair Access Protocol if necessary.

### Quantifiable financial loss

Reimburse the cost of educational materials, tuition, or childcare bought by parents.

### Acknowledgement of non-monetary benefit

Where fault has resulted in a loss of educational provision, we will usually recommend a remedy payment of between £200 and £600 a month to acknowledge the impact of that loss. The figure should be based on the impact on the child and take account of factors such as:

- > the child's SEN;
- > any educational provision – full-time or part-time, without some or all of the specified support – that was made during the period;
- > whether additional provision now can remedy some or all of the loss;
- > whether the period affected was a significant one in a child's school career – for example, the first year of compulsory education, the transfer to secondary school, or the period preparing for public exams.

So, where a child without SEN received part-time education in supportive home circumstances, the remedy payment will usually be at the lower end of the range. Where a child with moderate learning difficulties received no education at all, the remedy payment will usually be at the higher end of the range.

## Education out of school cont....

### Contextual circumstances

- > The primary injustice is to the child and this should be recognised in the remedy.
- > Impact on education, development and life-chances may be significant. This is particularly so for a child with SEN, who is already educationally disadvantaged.
- > A child working towards GCSEs may not be able to access the full range of subjects, or the curriculum for the relevant exam board, while out of school. This can also increase the impact of the fault significantly.
- > A child who is out of school after moving to a new area may miss out not only on education, but also on the opportunity to form local friendships. The distress arising from this isolation can be remedied by a modest payment, with a broad interpretation of how it should be spent.

## School admissions and school appeals

Fault in school admissions can cause a great deal of worry for parents. It may lead to a child missing out on a school place or missing significant periods of education. Faults in appeals may mean parents have not had a fair hearing. They may also call into question the outcome of the appeal.

Schools which are their own admission authority may delegate some or all of the admissions and appeals processes to the local authority. But the school retains responsibility for ensuring that the correct processes are followed. So the school has the responsibility to remedy any injustice arising from faults in those processes.

Remedies the LGO may recommend include:

### Remedial action

- > Determine an application or offer an appeal without delay.
- > Offer a fresh appeal with a new panel and clerk.
- > Exceptionally, if it is clear that fault in the admissions process deprived the child of a place at a particular school, and if fault in the appeal meant the panel did not properly consider this, offer a place.

### Contextual circumstances

If a child was out of school altogether because of fault during the admissions process, then remedies in the 'Education out of school' section of this guidance may also apply.



## School transport

Faults in school transport cases can mean a child goes without the 'home to school' transport support that they should receive. Parents may have to pay for transport, or a child may not be able to attend the school. It can mean children have to walk to school on unsafe routes or have journeys that are too long.

Remedies the LGO may recommend include:

### Remedial action

- > Decide an application or offer an appeal without delay.
- > Reassess the safety or distance of a route before coming to a new decision.
- > Reassess the transport provided.
- > Provide bus passes for parents and younger siblings where a child is too young to travel unescorted on public transport.
- > Offer a new appeal with different officers or members hearing the appeal, if a previous appeal was affected by fault.

### Quantifiable financial loss

Reimburse costs incurred by parents arranging own transport.

### Contextual circumstances

The council should normally provide suitable transport to a school named in a statement of SEN.

If a child is out of school altogether because of fault during the school transport application process, then remedies in the 'Education out of school' section of this guidance may also apply.

## Special educational needs (SEN)

In SEN complaints we are usually seeking to remedy a shortfall in the provision specified in the child's statement of SEN, or injustice caused by delay in completing the assessment and statementing process.

We would usually wait for the outcome of the appeal before the First-Tier Tribunal as we may need this decision before we can assess the injustice. This is especially relevant in cases where the parent has paid private school fees and the First-Tier Tribunal has to decide whether the school should be named in the statement.

Remedies the LGO may recommend include:

### Remedial action

- > Complete an assessment without further delay.
- > Arrange extra provision to make up for the shortfall – this is particularly relevant for provision such as speech and language therapy and occupational therapy.
- > Provide educational equipment.

### Quantifiable financial loss

Reimburse school fees, where it can be shown that the council would have met them if there had been no avoidable delay.

### Acknowledgement of loss of non-monetary benefit

Where fault has resulted in a loss of educational provision, we will usually recommend a remedy payment of between £200 and £600 a month to acknowledge the impact of that loss. The figure should be based on the impact on the child and take account of factors such as:

- > the severity of the child's SEN;
- > any educational provision – full-time or part-time, without some or all of the specified support – that was made during the period;
- > whether additional provision now can remedy some or all of the loss;
- > whether the period affected was a significant one in a child's school career – for example, the first year of compulsory education, the transfer to secondary school, or the period preparing for public exams.

So where there was a delay in arranging six hours of classroom support a week, it is likely the remedy payment will fall at the lower end of the range; but a similar delay during the first term at secondary school is likely to justify a remedy payment in the middle of the range; and a delay in arranging full-time classroom support during the first term of secondary school might justify a remedy payment at the higher end of the range.

### Special educational needs (SEN) cont....

#### Contextual circumstances

- > In complaints involving children of sufficient maturity and understanding we should take account of the child's view of injustice and remedy.
- > In cases of young people aged 16 plus there may be grounds to consider paying all or some of the financial remedy direct to them.

## Anti-social behaviour (ASB)

Councils have duties to investigate anti-social behaviour such as excessive noise, intimidation, drunkenness and petty vandalism and they have powers to take action against people whose behaviour is unacceptable. Other agencies including landlords and the police may have a role in controlling and remedying ASB so good liaison with other agencies is important.

The most common feature of ASB cases is the effect it has on the quality of life of the complainant. The distress caused to those who suffer may be displayed by fear, lack of sleep, and staying with relatives or friends. Delay or lack of action by a council may result in further distress which might otherwise have been avoided. It is important to ensure that the remedy is for the additional distress caused by fault in the council's response.

Remedies the LGO may recommend include:

### Remedial action

- > Re-evaluate the evidence and consider what action to take. This may include gathering further evidence by:
  - interviewing witnesses;
  - using officers or specialists as independent witnesses;
  - installing noise monitoring equipment.
- > Review with the police the practical measures available to control ASB.

### Acknowledgement of loss of non-monetary benefit

Where delay in taking action has caused demonstrable loss of amenity, we will usually recommend a payment in the range of £75 to £350 a month, taking account of the severity of the loss and the circumstances of the complainant. Where the loss of amenity was minor, for example intermittent noise disturbance during daylight hours, the payment would be at the lower end of the range. Where the impact on daily life was significant, for example a vulnerable complainant and her young children were routinely deprived of sleep, this would merit a payment at the upper end.

### Contextual circumstances

The level of injustice may be greater for complainants, or members of their household, who are vulnerable (for example through age or disability).

## Cemeteries and crematoria

Faults in the administration of cemeteries and crematoria can cause relatives significant distress. This is particularly so when the impact of a fault only becomes apparent at a burial or other significant occasion (such as the anniversary of the death). Faults can include incorrect allocation of a grave plot, burial in the wrong plot, damage to graves, poor maintenance, failure to address vandalism, and failure to take account of local criteria when approving memorials. Councils also test the safety of memorials at regular intervals. Assessment criteria need to be clear and easily understood.

Councils have a duty to bury or cremate anyone who dies or is found dead in its area where it seems no suitable arrangements have been made. Councils also have a duty to dispose of the deceased's property. Councils should make reasonable attempts to contact next of kin before organising a funeral or disposing of property. Failure to deal sensitively with burial, and with the disposal of the deceased's goods, can lead to considerable distress. It can add significantly to the grief felt by the deceased's family and next of kin. It can lead to the loss of intensely personal items such as family photographs or objects that next of kin would treasure. And it can deny someone the chance to arrange a personal funeral and pay their respects.

Remedies the LGO may recommend include:

### Remedial action

- > Support the complainant (or third party) through the process of applying to have remains exhumed and re-buried.
- > Revise risk assessment procedures, policies and training.
- > Improve publicity about the action the council will take if it finds a memorial is unsafe.
- > Install a memorial seat or feature to commemorate the deceased.
- > Arrange for bereavement counselling.

### Quantifiable financial loss

- > Costs associated with exhumation and re-burial.
- > Cost of repairing, restoring or replacing a memorial.

### Contextual circumstances

Typical reaction to any intervention is anger, distress, and shock. In assessing injustice it is important to separate out the natural distress over the death of a loved one, and the additional distress arising from council fault. This is still likely to be significant.

## Environmental health

Councils have a duty to take 'reasonably practicable steps' to investigate complaints of various nuisances, including smells, dust, smoke, and noise, that are prejudicial to health or cause a nuisance. Councils can only take enforcement action if they identify that a statutory nuisance exists or is likely to occur or recur. Councils have a similar duty to take steps to prevent nuisance.

Smells, dust and smoke cannot be easily measured, but the government has given guidance. Whether the problem amounts to a statutory nuisance depends on type, frequency, duration and timing, and is a matter of professional judgement. Councils can also take action to address light pollution.

Remedies the LGO may recommend include:

### Remedial action

- > Investigate the issue.
- > Re-evaluate evidence to see if action can be taken now.

### Acknowledgement of loss of non-monetary benefit

If it is clear that a properly conducted investigation would have led to action to address nuisance sooner, we will usually recommend a payment for loss of amenity in the range of £75 to £350 a month, taking account of the severity of the loss and the circumstances of the complainant. Where the loss of amenity was minor, for example intermittent fumes prevented ventilation of the home during the day, the payment would be at the lower end of the range. Where the impact on daily life was significant, for example round-the-clock noise disturbed a housebound complainant, this would merit a payment at the upper end.

### Contextual circumstances

If a complainant, on the council's instructions, kept records which the council subsequently failed to consider, a payment for avoidable time and trouble may also be appropriate.

### Taxis and private hire vehicles

Councils have duties to license hackney cabs (taxis) and private hire vehicles. We can consider complaints by taxi drivers and taxi driver associations about issues such as increases to fees, the number of licences issued in the council's area, and vehicle standards and testing.

Councils will consider complaints about drivers who break the licence. The most common feature of these complaints is poor customer service or fare disputes and unfair 'disciplinary' action taken by councils against taxi drivers without giving the driver a right of representation.

Action can lead to the loss of a licence and thus someone's livelihood so it can cause great distress and anxiety. Delay or lack of action by a council may also result in avoidable distress.

Remedies the LGO may recommend include:

#### Remedial action

- > Invite a new licence application and consider it.
- > Start or review a complaint investigation where there has been procedural fault in the initial investigation.
- > Put statements on file where a driver may not have had the opportunity to put forward his or her version of events, and reconsider or take this information into account.
- > Publicly confirm the final outcome, where a flawed or delayed investigation has led to loss of reputation affecting the complainant, and the new finding exonerates the complainant.

#### Quantifiable financial loss

Costs of a vehicle bought or disposed of on the basis of wrong advice given by the council.

## Waste management

Councils have a duty to collect household waste free of charge, but they can limit the number of bins they are prepared to collect from each property and the frequency of collection. The council can tell residents where to put the bin and what can and cannot be put in it. People often complain about the lack of bin collections, sufficient bin space and where the council specifies the bin must be placed. Councils may also remove abandoned waste, including cars.

Remedies the LGO may recommend include:

### Remedial action

- > Consider moving wheeled bin collection points.
- > Re-assess the needs of disabled residents in deciding wheeled bin collection points.
- > Improve arrangements for monitoring waste collection.

### Quantifiable financial loss

- > Reimburse the nominal costs of taking household waste to a tip when it should have been collected.
- > Pay the value of a car wrongly removed and destroyed.



## Homelessness

Fault by councils when exercising their homelessness duties can cause a serious injustice to a person in need of housing. A homeless person may be forced to sleep rough if a council wrongly refuses to take a valid homelessness application. A homeless family may be required to stay in unsuitable accommodation for a long time if a council delays deciding their homelessness application. Due to their personal and financial circumstances, homeless people may be significantly affected by such failures.

Remedies the LGO may recommend include:

### Remedial action

- > Take a homelessness application.
- > Provide suitable accommodation.
- > Issue a decision.
- > Consider a review request.

### Acknowledgement of loss of non-monetary benefit

- > Where a complainant has been deprived of suitable accommodation during what would inevitably have been a stressful period in their life, our recommendation for financial redress is likely to be in the range of £150 to £350 a month. The figure should be based on the impact on the complainant and take account of factors such as:
  - size of the accommodation – were there enough beds/rooms for those placed there?;
  - state of repair of the accommodation;
  - availability of private toilet and bathing facilities;
  - availability of food storage, preparation and cooking facilities;
  - ages of the occupants; and
  - disabilities or vulnerabilities of the occupants.
- > So a situation where a mother and three-year-old daughter had to share a bed for a month might merit a payment of £150; but a family of four sharing one room for a month might merit a payment of £350.
- > Where it is clear that a complainant had no option but to sleep on the street as a result of fault by the council, financial redress is likely to be at the upper end of the range, with an additional payment to acknowledge distress, to be assessed in line with our general guidance.

### Contextual circumstances

The injustice is likely to be greater if the complainant is particularly vulnerable, or has dependents who were also affected.

## Housing adaptations

Sometimes people are seeking adaptations to their home, rather than a move. They may have to wait too long for the adaptations, or encounter problems during the work or after it is complete. Two council departments are usually involved – social services assess the need, and housing allocates the grant and may carry out or supervise the work. Councils also provide funding for some home improvements. Councils may require the complainant to manage the contract for the works, including confirming that works meet the required standard.

Remedies the LGO may recommend include:

### Remedial action

- > Carry out a new assessment of need.
- > Carry out agreed adaptations within a set timescale.
- > Inspect work done and arrange remedial work if needed.
- > Consider other ways of helping complainants to meet a shortfall in funding for the required work. Departments other than housing may be able to make an interest-free loan or provide funds recoverable through a charge on the property.
- > Review policies on departments working together.

### Quantifiable financial loss

- > Expenses caused by delay in carrying out adaptations; for example, additional care charges, where these have not been met by direct payments.
- > Professional fees for drawing up plans, where this was an additional cost made necessary by council fault.

### Acknowledgement of loss of non-monetary benefit

Where a complainant has been deprived of modifications which would have improved his or her daily life, we will usually recommend a remedy payment in the range of £150 to £350 a month. The figure should be based on the impact on the complainant and take account of factors such as:

- > the extent of the adaptations needed. A remedy for the impact of a delay in installing a handrail is likely to be at the lower end of the range. The impact of a delay in providing accessible bathing facilities is likely to fall at the upper end of the range;
- > the particular circumstances of the person requiring adaptations. Avoidable uncertainty about when works will begin is likely to have a greater impact on a person with autistic spectrum disorder, for example; and time is of the essence for those with life-limiting illness;
- > the adequacy of current or interim arrangements. The impact of delay on a person who is able to access bathing facilities with help, and who has such help, will be less than the impact on a person who is left for a period without any access to bathing facilities.

### Contextual circumstances

Others, particularly close family carers, and siblings if adaptations are to meet the needs of a child, may also have been affected by the fault. Their injustice should be considered in line with our guidance on distress.

## Housing allocations and transfers

Where people live, and the conditions they live in, significantly affect day-to-day life. Demand for social housing considerably outstrips supply, so fault by the council can add to the already long wait for a suitable property, or mean that people are not able to access social housing at all.

Remedies the LGO may recommend include:

### Remedial action

- > Backdate an application or priority award.
- > Correctly allocate priority or waiting time.
- > Enhance priority or waiting time (particularly appropriate if there has been a delay).
- > Carry out a medical assessment and make appropriate provision.
- > Carry out a review of a decision.
- > Allow a person to go on the housing list.

Where a person has missed out on a property, we may recommend the council allocate the next suitable property available. This is not always possible, for example if the complainant wanted property near family or school, or there may be a delay. In these cases a higher financial payment may be appropriate to acknowledge the greater impact of the lost opportunity, and the additional time spent living in unsuitable accommodation.

### Acknowledgement of loss of non-monetary benefit

- > Where a complainant has had to remain in unsuitable accommodation because of fault in the housing allocation process, financial redress is likely to be in the range of £150 to £350 a month. The figure should be based on the impact on the complainant and take account of factors such as:
  - overcrowding;
  - disrepair;
  - the physical needs of the occupants – for example, a disability which prevents access to some rooms; and
  - any particular vulnerability of the complainant or household members.
- > So a situation where three young children had to continue to share a bedroom would usually require a remedy at the lower end of the range; and a situation where a disabled adult could not access bathing facilities would usually require a remedy at the upper end of the range.
- > If the complainant's current home meets their identified needs for size, location and accessibility, it is unlikely to fit the description 'unsuitable accommodation'. So the injustice will usually be the complainant's lost opportunity to improve their housing situation or meet their preferences. This should be assessed in line with our guidelines on distress.

### Housing allocations and transfers cont....

#### Contextual circumstances

- > The injustice is likely to be greater if the complainant is particularly vulnerable, or has dependents who were also affected.
- > The injustice may be less if the complainant has failed to bid on suitable properties during the period affected by fault.
- > Other tenants may have been affected by a failure in applying a policy.

## Planning

Fault in the planning process can have a significant impact on a complainant's home life. Complaints about planning include failure to reach a decision on a planning application properly, failure to take enforcement action against a breach of planning permission, failure to investigate a reported planning breach, delay, and flawed planning application advice.

When planning applications are determined incorrectly, complainants often seek revocation of the permission. This is extremely rare as we can only recommend a revocation order in very exceptional cases. The injustice can usually be remedied by taking other action at significantly lower cost to the public. This may include making a payment to acknowledge harm arising from the fault.

Remedies the LGO may recommend include:

### Remedial action

- > Investigate the planning breach and decide what action to take.
- > Take steps to serve enforcement notices or enforce a planning agreement without further delay.
- > Consider whether a statutory nuisance exists and take appropriate action.

Where development has not yet been completed, the council may be able to informally negotiate an amendment to the permission with the developer so as to prevent injustice arising for the complainant, for example by including:

- > obscure glazing in overlooking windows;
- > fast-growing or established shrubs or trees in a planting scheme; or
- > a wall, fence or trellis along a boundary.

It may also be possible to reduce the impact of permanent loss of amenity by taking mitigating measures such as:

- > redesigning the complainant's garden;
- > erecting an acoustic barrier; or
- > installing double glazing for parts of a house affected by noise.

## Planning cont....

### Quantifiable financial loss

- > If mitigation of the effects of the flawed decision is not possible, and it is clear that if there had been no fault the planning application would not have been approved, we may recommend the council pays the complainant the loss of value to their property. A 'before and after' valuation may be needed to determine this. We usually recommend this is carried out by the district valuer. It is not based on what the value of the complainant's property would have been if there had been no development. It is based on what the value would have been if there had been no fault – which may still have led to some development taking place.
- > Refund of fees and costs incurred where a complainant has acted on flawed planning advice.
- > Where matters involved were of significant complexity, we will consider reimbursement of professional fees. But it would not generally be considered necessary to reimburse fees for both a planning agent and a solicitor about the same matter.

### Acknowledgement of loss of non-monetary benefit

Where a loss of amenity was temporary (for example, pending remedial or enforcement action), we normally recommend a payment in the range of £75 to £350 a month, taking account of the severity of the loss and the circumstances of the complainant. So a lack of screening might cause a moderate loss of amenity at the lower end of the range where there was no overlooking and the complainant was out during the day; but the loss of amenity would be at the higher end of the range where a lack of screening caused window-to-window overlooking, and therefore a significant loss of privacy, to a housebound complainant.

## 5 Remedy examples

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These examples are based on real complaints, and show how we put our guidance on remedies into practice.

In many cases, we do not find fault causing injustice, so a remedy is not appropriate. When it is, the remedy reflects the impact of the fault on the complainant, rather than the fault itself. So these examples are not precedents for future complaints where we find similar fault, because the circumstances of each complainant are different.

### Remedial action

Mrs A's car was clamped while she was making an emergency visit to an elderly relative who lived on a council estate. The council agreed to refund the charge of £95 she had paid to remove the clamp, but then delayed making the payment for several months. The council offered to increase the compensation but her relative's health had declined and Mrs A had to visit more frequently. **We recommended** the council allocate Mrs A a parking space at the estate and give her a 12-month parking permit. This was of more value to Mrs A than the equivalent payment would have been.

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**Apology  
Acknowledgement of  
moderate distress**

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### Appropriate for the circumstances

Mr B could not cope with his daughter C and asked the council for support. The council did not respond to the request, and C went to live with her mother. Her mother also failed to cope and C was placed in foster care. The council did not consult Mr B or consider moving C back to his care.

**Apology  
Acknowledgement of  
severe distress**

Mr B's confidence in the council was undermined which contributed to ongoing difficulties and caused him significant distress. He was also left not knowing whether some of the stress he experienced could have been avoided and whether intervention by the council at an earlier stage could have meant C remained living with him, rather than being placed in foster care. C herself was also left not knowing if, with support, she could have lived with her father instead of going into foster care.

**We recommended** the council remind staff dealing with children being placed into care that contact needs to be made with family members and, in particular, both parents of a child before a decision to place the child in foster care is made, even if a parent has in the recent past indicated that they cannot care for the child. We also recommended a payment of £2,000 to Mr B to acknowledge the distress arising to him from the council's fault, and a payment of £1,000 to C to help her reconnect and reintegrate with her family when she is eventually returned to their care.

The remedy took account of the considerable difficulty the council experienced in involving Mr B in planning for C's future, and the fact that Mr B himself made no contact with the council about this issue for a 14-month period. The remedy also took account of the progress C had made while in foster care, and the stability this arrangement had provided for her.

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### Appropriate for the circumstances

Mr Y sent the council a petition about lorries using the road through his village. The petition raised legitimate concerns and it took the council three months to respond. That response simply said the council would investigate. The council's investigation was then delayed by the need to gather data and produce a report. The council failed to provide Mr Y with any updates while it did this. This was fault by the council. **We decided** the council's apology was a satisfactory remedy for the injustice Mr Y was caused by that error. We found no fault in the decision-making process about the substantive issue of traffic through the village.

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**Apology**

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### Payment of costs

When Mr and Mrs J decided to move abroad, one of the children they were fostering wanted to move with them. A court approved this. The council decided that because the situation was unusual the financial support it provided for the placement should be set out in a legal contract between it and Mr and Mrs J. The contract took some time to agree and the council required Mr and Mrs J to pay for their own legal representation regarding the matter. We agreed with Mr and Mrs J that as the placement was on behalf of the council it should have met the costs of agreeing the contract.

**We recommended** the council pay their legal costs of £4,300.

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**Apology**  
**Quantifiable financial loss**

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### Quantifiable financial loss

Mr J replaced his van following advice from the authority that it would not comply with new emission requirements needed to allow it to be driven within a low emission zone. The advice was wrong and the old van would have been compliant with the new requirements. When the authority realised the advice given was wrong it made no attempt to contact Mr J to advise him correctly.

Mr J had therefore spent money on a new van when he had no need to do so. There were 35 complainants in the same position. We considered that although the owners paid a considerable sum to buy a new van (over £15,000 in some cases) that was not entirely attributable to the council's actions. They now had an asset which had a value. In addition a new van would have a guarantee, be more fuel efficient and less likely to break down. We concluded the real loss to the complainants was the immediate depreciation which the vehicles would suffer as soon as they were put on the road. **We recommended** that a reimbursement of 15% of the purchase price would be a fair remedy, to reflect the drop in value of the asset as soon as it was put on the road.

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**Apology**  
**Quantifiable financial**  
**loss**

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### Assessment of need

Ms G complained that Council X failed to ensure her daughter Ms J's needs were met whilst she was waiting for Council Y to agree funding responsibility. Ms J was 26 and had Asperger's syndrome. She needed support with education, employment, organisation and time management. She also needed prompts to maintain her personal hygiene and appearance.

Council X provided Ms J with funding for 10 hours of support a week to enable her to live independently when she went to university in Council Y's area. Ms J decided she wanted to stay there after finishing her degree. Council X said it would stop funding Ms J's care and told Ms G to approach Council Y. Council Y began its assessment of Ms J's needs two months later but failed to progress the assessment as it was waiting for records from Council X. During this period, and on more than one occasion, Ms G expressed serious concern about her daughter's welfare to both councils. Ms J could not organise the benefits she needed and her mental health was deteriorating. Both councils lost sight of the key priority of promoting the well being of a vulnerable adult in need of community care services. They failed to provide services to meet Ms J's assessed eligible needs and in doing so, they effectively abandoned her for a total of six months. Both councils were aware this situation was placing Ms J's mental health in jeopardy yet they took no decisive action to resolve matters. This was an injustice to Ms J. Ms G had to make monthly visits to help her daughter with matters that should have been covered by an appropriate care package. The time and inconvenience she was put to, coupled with the undue distress and worry caused by this situation, was her injustice.

**We recommended** each council apologise and make a payment to Ms J of £1,000 (£2,000 in total) to acknowledge her distress and anxiety. We also recommended each council apologise and make a payment to Ms G of £500 (£1,000 in total) to acknowledge her distress and inconvenience.

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**Apology**  
**Acknowledgment of**  
**severe distress**

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## Assessment of need

Mr F attends a day care facility and the council provided him with transport there and back. Due to a dispute about costs between the council and the transport provider, the council told Mr F he would have to either fund his own transport or share transport with another service user. The council did not reassess Mr F's needs before making this change. Neither option was in fact appropriate so Mr F could not access day care for six months. The council then agreed to reinstate transport and reassess Mr F's needs but delayed for a further six months in doing so. Mr F's parents, who made the complaint, were put to significant time and trouble to obtain the services Mr F needed, and had to provide him with additional support at home. **We recommended** the council:

- > remind senior managers and officers that services cannot be reduced or changed without a reassessment of a person's needs;
- > review other service users who may have been affected by the same policy decision in relation to the payment of transport for services commissioned from the same provider;
- > apologise to Mr F and his parents for the identified failures;
- > pay £1,000 to Mr F to acknowledge the prolonged distress which resulted from him not being able to access services he was entitled to; and
- > pay £200 to Mr F's parents to acknowledge the anxiety and distress and uncertainty caused to them by the way the council withdrew services, failed to follow through an agreement to reinstate transport, and delayed in reassessing Mr F's needs.

Apology  
Review policy/  
procedure  
Acknowledgment of  
prolonged distress  
Acknowledgement of  
moderate time and  
trouble

Mrs J requested a wheelchair from the council. The council delayed for a month in considering her request. It then applied its wheelchair policy and said that she was not entitled to a wheelchair as she only needed it for social use. The council failed to consider Mrs J's individual needs for a wheelchair and how the lack of a wheelchair may affect her ability to participate in social activities and to attend medical appointments. So Mrs J was left not knowing whether, but for the faults identified, she was entitled to a wheelchair. **We recommended** the council review its wheelchair policy to ensure that individual circumstances are taken into account before making a decision; apologise to Mrs J for not completing an assessment earlier; carry out a reassessment of Mrs J to consider whether she is entitled to a wheelchair; and communicate any further decision in writing explaining the reasons for its decision.

Apology  
Review policy/  
procedure  
Remedial action

## Care or support plans, and provision of care

Mrs J lived in a residential care home. She could not use her left side after a stroke, was in a wheelchair and was not able to dress herself. She preferred to wear trousers. But the care home staff dressed her in skirts with no underwear as it made personal care tasks easier. Mrs J found this degrading, undignified and upsetting particularly when friends and family were visiting. We found the failure to take account of her wishes was fault. **We recommended** the council refund half the residential home fees for the period of her stay there. The council also apologised and paid £50 to cover Mrs J's daughter's time and trouble to make the complaint. The care provider (acting on behalf of the council who funded Mrs J's placement):

- > sent all its staff on dignity training;
- > committed to keeping the issue under review at staff supervision meetings; and
- > reminded staff about the importance of respecting resident choice and dignity.

We also referred the case to the Care Quality Commission.

Apology  
 Review policy/  
 procedure  
 Quantifiable financial  
 loss (refund for  
 service failure)  
 Acknowledgement of  
 moderate time and  
 trouble

## Care or support plans, and provision of care

Mrs B's husband has an acquired brain injury and lives in a specialist nursing home. The council commissions this care. It made significant efforts to review Mr B's needs and support during a period when his condition was changing, and it involved Mrs B in this process. But the council failed to write a care plan for almost two years and delayed in facilitating Mr B's transition from the home to the community. So Mr B remained in a nursing home for longer than necessary, rather than receiving services that would promote his independence and integration in the community. The council's delay in responding to Mrs B's complaint about this caused her significant inconvenience and frustration.

**We recommended** the council pay £1,000 to Mr and Mrs B to acknowledge the impact of its faults on them. We also recommended the council:

- > complete a new financial assessment to determine Mr B's contribution towards community services as soon as his support plan was agreed;
- > arrange a new continuing healthcare assessment of Mr B as a matter of priority;
- > keep Mrs B informed of any progress concerning her husband's proposed move and ensure she is involved in assessments and discussions about his care and transition options; and
- > complete capacity assessments on a decision by decision basis in line with the Mental Capacity Act 2005.

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**Apology**  
**Acknowledgement of**  
**significant distress**  
**Remedial action**

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## Care or support plans, and provision of care

Mrs Q raised concerns with the council about the care provided by a care agency to her daughter Ms J. The council's initial response to Mrs Q's complaint failed to address her concerns properly. When Mrs Q complained a second time the council did nothing until she sent a reminder. It then advised her to make a formal complaint. Officers should either have sent Mrs Q a proper response to her letter, including the information she had asked for, or passed it on to the complaints department. The key issues Mrs Q raised about her daughter's diet, cleaning items wrongly being charged to Ms J, and training for carers to support Ms J's communications needs, remained unanswered. And as the care agency overwrote the support plan whenever it was updated, there was no historic record of the support which should have been in place at the relevant time, which hindered investigation of these issues.

**We recommended** the council:

- > apologise to Mrs Q for the poor way it dealt with her concerns;
- > take action to address the issue of Ms J's diet and work with Mrs Q to ensure the dietician gets the information needed to provide advice;
- > take action to identify any money to be refunded to Ms J, and pay it back to her;
- > ensure risk assessments are done for the use of Ms J's mobility equipment;
- > ensure it keeps a copy of Ms J's support plan each year;
- > review Ms J's support plan to ensure it properly addresses her communication needs; and
- > pay Mrs Q £100 to acknowledge her avoidable time and trouble in pursuing the complaint.

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**Apology**  
**Remedial action**  
**Acknowledgement of**  
**moderate time and**  
**trouble**

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## Care providers

Mrs H lived in a residential home. The care provider failed to issue her with a contract, and gave no written costs information, but verbally agreed the fee, and said that the fee would not change. Later, Mrs H was assessed as needing nursing care, so she received an NHS contribution towards her fees. The care provider made a mistake in its invoicing and deducted this amount from the amount she had agreed to pay. Mrs H was then assessed as eligible for continuing healthcare funding. She should not have paid towards her fees after that date. But the care provider continued to invoice and the family continued to pay. This resulted in an overpayment which did not become apparent until after Mrs H's death. **We recommended** the care provider refund the overpayment to Mrs H's estate and take steps to ensure that in future, its invoices are correct, it issues contracts and written information about costs in all cases, and it has an accessible complaints procedure. We also referred the case to the Care Quality Commission.

Apology  
Review policy/  
procedure  
Quantifiable financial  
loss

Mrs G was elderly and paid for her own domiciliary care with a home care agency. Care staff were scheduled to visit her twice a week to attend to personal care, such as helping her wash. On four occasions they did not turn up. On two of them the agency sent alternative staff when Mrs G raised the problem. Mrs G could not wash without help, so the missed and delayed calls caused her distress and inconvenience.

Apology  
Review policy/  
procedure  
Remedial action

When we investigated, the agency confirmed that it had not charged for the four missed calls, and offered to apologise in person to Mrs G. It set up a new rota system and a call log to prevent such failures happening again. **We decided** that these steps provided a fair remedy.



## Care providers

Mr G was a self-funding resident in a private residential care home. He had dementia and difficulties with his mobility. His wife managed his financial affairs on his behalf and paid the home by standing order. Mr G's condition declined during his stay at the home. He was awarded continuing healthcare funding by the NHS to cover the full cost of his care fees due to the level of help he needed.

The standing order Mrs G had set up to pay the home continued after the NHS started funding Mr G's care. Mrs G wrote to the home asking for the money to be paid back. It paid back some of the overpaid fees but withheld just over £2,300. Mrs G asked for the full refund. Solicitors representing the home wrote to Mrs G saying Mr G's fees had increased (almost doubled) due to his deteriorating condition and so no further refund was due. We found the home's administrative practices were poor. There was no contract on Mr G's file and no record of a review or reassessment to evidence the change in his care needs.

**We recommended** the home apologise to Mrs G for her distress and refund the outstanding money straight away. We also asked the home to:

- > provide written terms and conditions for every resident;
- > carry out, within six months, an assessment of the current needs of each resident, in accordance with the Care Quality Commission's *Essential Standards of Quality and Safety*; and
- > introduce systems for
  - accurately recording when residents (or their representatives) are notified of increases in fees or charges;
  - checking payments received against the amounts due; and
  - promptly following up any discrepancies.

Apology  
Review policy/  
procedure  
Quantifiable financial  
loss

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## Care providers

Mrs J was elderly and lived in a residential care home. She commissioned and paid for her own care. Her daughter, Mrs H, complained that inadequate care in the home led to Mrs J's health declining and her admission to hospital. When we investigated we could not properly establish the level of care provided because of poor record keeping. For example, there was insufficient information about:

- > food and fluid intake;
- > what follow-up actions the care provider took when it recorded concerns about fluid intake and bed sores;
- > hospital transfer arrangements;
- > advice from the GP; and
- > conversations with family members.

Mrs J was admitted to hospital with dehydration, renal failure and pressure sores. The home's failure to keep adequate records led to uncertainty over whether the care was adequate, whether any failures in care led to the decline in Mrs J's health, and whether the home kept the family properly informed. We also found the home delayed by two months in responding to Mrs H's complaint, which made the matter worse.

**We recommended** the home improve its record keeping and complaint handling, and train staff about these issues. We also recommended the home apologise and pay £2,400 to acknowledge the uncertainty for Mrs J's family about whether failures in care had led to the decline in her health.

**Apology**  
**Review policy/  
 procedure**  
**Quantifiable financial  
 loss (refund for  
 service failure)**

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### Care providers

Mr B had a learning disability and was living in a residential care home arranged and funded by a council. Ms D (his sister) complained that staff at the care home did not:

- > contact her when Mr B needed to go to hospital urgently;
- > go to hospital with Mr B when his care plan said he needed an escort; and
- > pass on key medical information to the hospital about Mr B's condition and care needs.

We found the care home was at fault because:

- > Ms D was recorded as the emergency contact so staff should have contacted her; and
- > there should have been a hospital passport (key information about the person's medical condition and care needs) for staff to pass to the hospital.

We also identified that the care home had not reviewed Mr B's assessment of needs for six years when this should be done, by law, every year.

The care home changed its procedures so that all residents have a hospital passport that staff can give to a hospital. **We recommended** the care home pay Mr B £150 to acknowledge his distress in not having someone go with him to the hospital. The care home also agreed to assess Mr B's needs, to review the assessment of needs every year, and to record the outcome.

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Apology  
Review policy/  
procedure  
Remedial action  
Acknowledgement of  
moderate distress

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## Charging

Mr J complained about the adequacy of the information the council gave him about the costs of his wife's care. The council's officer and the complainant's family had different recollections of what happened in June when the officer gave the family a consent form and charge sheet to sign. Mrs J's care services started in July but the council did not assess her finances for another three weeks. The council did not then send the bill until six weeks after her care had started. The council said she had to pay the full costs of her services.

Had there been no delay by the council in confirming the amount Mrs J had to pay it seemed unlikely Mrs J would have refused the care package. But her family may well have decided they did not need all the care visits provided for in the package. **We recommended** the council write off 50% of the bill outstanding.

Mrs J complained that the council failed to backdate a lower assessed contribution for her husband's homecare service. The council carried out a telephone financial assessment with Mrs J to work out how much her husband would have to pay for his homecare service.

Mrs J queried her husband's contribution to the charge on several occasions. The council did not follow its usual practice in this case because it did not send out a financial assessment form after Mrs J first queried the charge; in fact it did not send a form to her for 14 months, despite her repeated queries.

Mrs J needed help from the council in completing the form and as a result of the new assessment her husband's contribution to the cost of his care was much lower. We concluded the council should have followed its procedure, and sent Mrs J a financial assessment form in response to her first query. If it had done this, it is likely it would have made an accurate financial assessment much sooner. **We recommended** the council backdate the reduced charge to the start of Mr J's homecare service and arrange a refund for the period for which he paid a higher charge.

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Apology  
Quantifiable financial  
loss

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Apology  
Quantifiable financial  
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## Charging

Mr F was resident at a nursing and care home for 11 months. The council arranged and commissioned the placement. It agreed with the home that Mr F’s care would be provided at the council’s funding rate. The council paid the home in full and invoiced Mr F for his contribution. When Mr F was due to move into the home the room that he had been allocated was not available. But the home said a larger room was unoccupied and Mr F could have this if he paid a temporary additional charge. His wife paid fees of £2,400. The council said it was not involved with this arrangement and could not help his wife to recover those fees. This was fault. The council had a contractual arrangement with the home and could have corrected the situation. **We recommended** the council reimburse Mrs F for the additional fees she had incurred; it could pursue the home for a refund through its contract. We also recommended the council remind all care providers with whom it arranges care that they cannot charge additional fees for the same services directly with the service user or their representative.

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**Apology**  
**Review policy/  
 procedure**  
**Quantifiable financial  
 loss**  
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The NHS had initially agreed continuing care funding for Mr X but a week later the council was told this was an error and Mr X did not meet the continuing care criteria. The council therefore assessed Mr X’s financial means and decided he had to contribute to his care costs. But the council continued to tell Mr X’s family that he did not have to pay for his care, and did not confirm the contribution in writing for another three months. The confusion and the lack of a written statement, setting out clearly the care contribution expected from the family, meant Mr X entered a care placement without fully knowing the financial implications. The council then presented Mr X’s wife with an invoice for the outstanding payments. This caused considerable and unnecessary anxiety. **We recommended** the council write off the charges incurred during the first three months of the placement, and allow Mr X’s wife a reasonable time to pay off the debt accumulated after the family knew about the contributions that Mr X was expected to pay. We also recommended the council review its procedures to ensure financial assessments and determinations are made known to families before they agree to a residential placement.

**Apology**  
**Review policy/  
 procedure**  
**Remedial action**  
**Quantifiable financial  
 loss**  
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## Mental capacity

Mrs D had a degenerative mental health condition. She was living with and being cared for by her sister Mrs E until a fall resulted in her admission to hospital. A multi-disciplinary discharge meeting decided that the flat Mrs E lived in was unsuitable and that she could not give the level of care Mrs D required. The option of Mrs D returning to the flat with a care package was explored but thought not to be viable. Mrs D was admitted to a nursing home.

Six months later Mrs E herself was diagnosed with the same condition as her sister. Her condition continued to deteriorate but she was reluctant to accept help from social services.

Mrs E never accepted she could not care for Mrs D and was unhappy with the care Mrs D received in the nursing home at times. The records show that Mrs D and Mrs E missed each other's company a lot. After three years the care home placed restrictions on Mrs E visiting following some difficulties between her and the carers. Some meetings were held at which Mrs E stated that she wanted to live in a care home with Mrs D.

Mrs E moved from her flat to sheltered accommodation and Mrs D was able to visit her there. At this time Mrs D began asking to go back and live with Mrs E. This resulted in an application for a Deprivation of Liberty authorisation. It was granted as Mrs D lacked capacity and Mrs E was not able to provide the level of care Mrs D needed. Mrs D's needs also could not have been met in sheltered and supported living accommodation. Both sisters were upset about the authorisation. The authorisation expired after six months and another was made and granted. In the second authorisation it is noted that both sisters voiced a preference for being together. It was however deemed to be in Mrs D's best interests to remain where she was. The council said it would support the sisters spending as much time together as possible.

We found it was fault by the council not to assess whether the sisters could live together in a home that could cater for the needs of both. So the council did not know whether the arrangements were the least restrictive. **We recommended** a multi-stakeholder meeting to begin the process of dealing with the sisters' assessments, and begin planning to accommodate them together for as long as they wished.

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Apology  
Remedial action

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## Mental capacity

For about 20 years, Mr D, who has Down's syndrome, lived in residential care where he formed a long-standing friendship with another resident, Ms B. Their carers were surprised when Mr D proposed to Ms B. Two different social workers met them over the next few months to talk about their plans. But the council did not assess Mr D's capacity to understand such a decision until two and a half years after he had proposed to Ms B. During that period officers encouraged Mr and Ms B to talk about the details of their wedding and where they would live afterwards. But once Mr D's mental capacity was assessed by a psychologist, the council had to tell Mr D that he could not marry Ms B after all. Mr D and Ms B accepted this decision and were not distressed by it.

We said that the council's failure to consult Mr D's family and to assess his mental capacity early on gave him false hope that he could marry Ms B; it also led to considerable distress and anxiety for his family. **We recommended** the council pay his family £500 to acknowledge the impact of its fault, provide more training about mental capacity for staff who work with people with learning disabilities, and consult residents' families much sooner about their relatives' decisions.

Mrs N was in her 70s, suffered from dementia and had lived in a care home for a number of years. She needed help with personal care but being a private person refused to let care home staff see her naked. A carer reported seeing a 'mole' on Mrs N's breast and within a matter of weeks this was confirmed as an advanced cancer which could not be treated, and Mrs N died. It was not possible to say how long Mrs N had had cancer. A safeguarding investigation found partial neglect by the care home.

We found the care home (acting on behalf of the council who funded Mrs N's placement) to be at fault. We found that it had not helped Mrs N to the best of its ability and in her best interests, in accordance with The Code of Practice which accompanies the Mental Health Capacity Act 2005. And it had not supported Mrs N to access breast screening facilities, in line with the Care Quality Commission's Essential Standards. **We recommended** the council acknowledge the distress caused to Mrs N's family by paying £1,000 to a charity of the family's choice. We also recommended the council review the way its contracts specify the need for screening of care home residents to make sure they are not disadvantaged by being in a care home.

Apology  
Review policy/  
procedure  
Remedial action  
Acknowledgement of  
moderate distress

Apology  
Review policy/  
procedure  
Acknowledgement of  
significant distress

## Personalisation (self-directed support)

Mrs J used her direct payment, plus funding from the Independent Living Fund, to employ two personal assistants. She paid them gross, because she did not realise that, as an employer, she should have deducted tax and National Insurance (NI) contributions.

After five years the council discovered this error. It told Mrs J that her failure to administer the direct payment account meant she was liable for unpaid tax and NI contributions. The unpaid liability owed to Her Majesty's Revenue and Customs (HMRC) came to about £46,000.

The council had signed an agreement to say it would support Mrs J to manage her payroll. We found the council was at fault because it:

- > did not provide her with any support to manage her payroll or direct payment;
- > failed to act when it did not receive regular timesheets from Mrs J;
- > only sent two letters to Mrs J in a five-year period asking her to return paperwork that she should have sent monthly; and
- > failed to monitor how Mrs J was spending the direct payment.

If the council had acted correctly, Mrs J would have made the correct deductions and not have incurred the liability.

**We recommended** the council support Mrs J to contact HMRC to find out how much was owed, and then pay any money owed to HMRC on Mrs J's behalf.

r  
**Apology**  
**Remedial action**  
**Quantifiable financial**  
**loss**

e

m

e

d

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## Personalisation (self-directed support)

Mr A and Ms B were in their thirties, had severe physical disabilities and shared a house. They had been friends since school. They received separate direct payments from the council with which they each employed personal assistants to provide 24-hour care. At night, each had a waking carer. For Ms B, female carers were essential and she did not want a male carer to deliver intimate personal care. Mr A employed male carers for the same reason. Both stayed away from home overnight regularly when visiting friends and family.

The council decided to review Mr A's and Ms B's care because of a change to its eligibility criteria. The outcome was a cut in direct payments, and the provision of shared night cover. We found the decision to reduce the direct payments was flawed because:

- > Mr A and Ms B lived independently in the community as co-tenants, not as a couple. Their needs should be assessed individually and funding decisions should not have considered the care available to a housemate;
- > the law says that councils must provide funding to meet eligible social care needs. The reviews concluded Mr A and Ms B needed help with personal care more than twice a night, every night. But Ms B's direct payment only covered the cost of a carer for two nights a week, so the funding for night care did not meet her eligible need. Similarly, Mr A's direct payment only covered care for five nights when the assessment said he needed care every night. So his eligible need was not met either;
- > Mr A and Ms B had needs that were incompatible with a shared night care arrangement. Either could be away from home and take the night carer with them. This would leave the other without any night care. It was unreasonable of the council to conclude that Mr A and Ms B could share night care without looking further at the impact of this arrangement on each of them individually; and
- > Ms B did not want a male carer to help her with intimate personal care. Mr A did not want a female carer for the same reasons. The council did not consider their right to respect for private life when it decided to reduce the payment and impose sharing of night care.

The council had not yet implemented the proposed cut in direct payments so Mr A and Ms B continued to receive the previous level of care while we were investigating the complaint. **We recommended** the council carry out fresh assessments of Mr A and Ms B, taking into account their individual needs and human rights.

r  
Apology  
Remedial action

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### Personalisation (self-directed support)

Mr B complained about a nursing home where his wife Mrs B stayed for a period of respite care. The council accepted it did not deal properly with Mr B's complaint. There were long delays and it never sent him a final response. The council offered to pay him £10 a month for the delay plus £100 for any distress this may have caused. The council also said it would help Mr B to find a different nursing home. But it only suggested two care homes and one of those was suggested in error. It did not therefore do what it said it would.

We found that the council's policy on direct payments was not in line with the Department of Health Guidance, as the council did not allow their use for respite breaks. This prevented Mr & Mrs B from exercising proper choice over where Mrs B stayed when Mr B went away for a break.

**We recommended** the council ensure its direct payments policy was brought into line with current guidance at the earliest opportunity. We also recommended it apologise to Mr & Mrs B and pay them £200 to acknowledge the impact of fault in the complaint process, and £300 to acknowledge their lost opportunities to choose Mrs B's respite care.

Apology  
Review policy/  
procedure  
Acknowledgement of  
moderate distress

### Safeguarding

Mr B was a social worker and director of a children's home. A resident made an allegation of abuse against him, which the council investigated. He complained that the council failed to follow procedures when carrying out the investigation. We found that there was delay in the investigation, referral forms were not completed properly and there was a lack of clarity in letters to Mr B. In the end the council decided not to pursue action, but as a result of the failures in procedure and poor communication Mr B was left believing the allegations were being pursued for four months longer than necessary. This caused him avoidable distress and anxiety.

**We recommended** that the council apologise, pay him £1,000 to acknowledge the impact of its fault, and ensure managers follow procedures and keep accurate records.

Apology  
Review policy/  
procedure  
Acknowledgement of  
significant distress

## Safeguarding

Mr A is elderly and has dementia. Because of the effect his behaviour was having on his wife, his family secured a placement in a specialised wing of a nursing home. He stayed there three months before his daughter removed him because of the home's failure to prevent him from wandering. On one occasion Mr A was missing for some time until a neighbour, who lived near his former home, reported that he had turned up there. The home's staff failed to realise he was missing – the alarm was raised when his family visited but could not locate him. In her complaint the daughter raised other concerns about quality of medical oversight, level of stimulation and quality of care in the home.

The home properly reported the incident to the Care Quality Commission and to the council. The council convened a safeguarding strategy meeting within two weeks to assess the situation for Mr A and other residents. The home's manager had by then investigated fully how the normal security arrangements had failed, and why staff had failed to spot Mr A's absence. He accepted that there had been serious shortcomings. He came to the meeting with a list of planned actions to prevent further such difficulties. He had identified practical measures to protect Mr A such as staff training issues and improving door security arrangements. He wanted to balance the need to protect residents who might wander with his wish to ensure the unit was accessible and welcoming to families and other legitimate visitors.

Mr A's family accepted that the home had made substantial improvements after the incident. We concluded that the care provider had promptly recognised a failure of care, and had taken appropriate steps to rectify matters. **We recommended** a payment of £250 each to Mrs A and her daughter in recognition of the distress and anxiety they had been caused by the home's faults during Mr A's stay there.

r  
Apology  
Acknowledgement of  
moderate distress

e

m

e

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y

### Benefits and discretionary housing payments

Mr B has mental health issues and was doing 'permitted work' for a mental health charity. So some of his income should have been disregarded when assessing his entitlement to benefits. The council underpaid Mr B for 21 months by £150 a month.

During the period he was being underpaid Mr B suffered hardship. He had to sell his car, go to court to fight eviction from his property and he had a relapse of his mental health. He self harmed and he was eventually sectioned. Mr B accepted the council was not solely responsible for his mental health relapse, but the debt he was in was clearly a contributory factor. He would not have had the stress of facing eviction had the council paid the correct benefits, and because of his illness he was less able to cope with this stress than others would be. **We recommended** the council pay Mr B the unpaid benefit of £3,150. Because Mr B was vulnerable, and the period of avoidable distress was a significant one, we also recommended the council pay him a further £1,000 to acknowledge the impact of its fault.

r  
**Apology**  
**Quantifiable financial loss**  
**Acknowledgement of significant distress**

Mr L appealed against a council's housing benefit decision but the council did not review its decision for two years. He received no benefit during this time but the council did not progress the appeal even when he complained. When the council did carry out a review, it paid him £15,000 in backdated benefits. Mr L claimed he lost his home because of the council's delay but provided no evidence that he had been evicted. He also said he had to pay £2,700 in legal fees to help pursue his appeal, and had incurred avoidable interest charges because he took out loans to survive. **We recommended** the council pay Mr L £2,500, representing the interest on £15,000 at 8% over the period of delay. We used this interest rate because it most appropriately reflected the avoidable interest charges he had incurred. We recommended the council pay Mr L a further £500 to acknowledge the avoidable frustration caused by its error. But we did not accept that legal advice was necessary to pursue the appeal or that Mr L had lost his home as a direct result of the council's delay.

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m  
**Apology**  
**Quantifiable financial loss (interest)**  
**Acknowledgement of significant distress**

d

y

### Benefits and discretionary housing payments

Ms N disagreed with decisions about her housing benefit. We found the council's letters accompanying decision notices were poorly worded, implying Ms N's only recourse was to complain to the LGO. This caused her to lose the opportunity to appeal. **We recommended** the council allow Ms N a further month to request a review or appeal, as this put her back in the position she would have been in had there been no fault.

r  
**Apology**  
**Remedial action**

Mr G became self-employed and told the council, so it could review his benefit entitlement. The council delayed in responding to the change in circumstances for 18 weeks. The council also failed to respond to complaints. The delay caused Mr G frustration and uncertainty because he did not know what benefit he would receive. **We recommended** the council reconsider Mr G's claim as a priority and pay him £150 to acknowledge the distress caused by the delay. We did not propose a higher financial remedy because Mr G did not provide specific evidence of hardship, and it was not known if the reconsideration would result in any benefit being paid.

e  
**Apology**  
**Remedial action**  
**Acknowledgement of moderate distress**

Mr B contacted the council to check what his benefit entitlement would be after he started work. The council told him his benefits would continue for four weeks after starting work but this advice was wrong. This caused Mr B financial embarrassment, because he used his wages for other expenses and did not reserve money for rent and council tax, and then had to borrow from friends and family. **We recommended** the council apologise to Mr B and pay him £150 to acknowledge the avoidable distress caused by its fault.

m  
**Apology**  
**Acknowledgement of moderate distress**

## Benefits and discretionary housing payments

Mr R received council tax benefit for several years. The council decided Mr R had never been entitled to this benefit so it cancelled it retrospectively, which created arrears of over £2,800 on his council tax account. Mr R disputed the council's decision and appealed. He did not pay off the arrears while the appeal was pending. So the council obtained a liability order confirming the debt. The council said it would refer the debt to bailiffs if Mr R did not make a repayment arrangement. Mr R agreed to pay off the arrears in eight monthly instalments but worried he would not be able to keep up the repayments as he had no income at the time. He asked to reduce the repayments to £20 a month and the council refused.

We found the council had based its decision to take recovery action entirely on wanting to recover all the unpaid council tax by the end of the financial year. So it had not considered all relevant information in deciding to continue with recovery action while Mr R's benefit appeal was outstanding. The council had also wrongly told Mr R it was not possible to make a repayment arrangement for less than £50 a month. This caused Mr R uncertainty about whether, if the council had considered matters properly, the threat of bailiff action might have been avoided and he might have had a repayment arrangement which was easier to manage. **We recommended** the council reconsider its decision to take recovery action, taking account of factors such as how likely it was to win the appeal, the size of the debt, and Mr R's vulnerability. We said the council should keep a clear record of the reasons for its decision. We also recommended the council contact Mr R to ask if he still wanted it to reconsider the terms of the payment arrangement.

Ms L applied for an emergency grant when she moved into her new home. The council required her to apply for an emergency loan before it would consider an application for an emergency grant. We found the council was wrong to do this because Ms L's circumstances did not fit the requirements of the emergency loan. As a result of this fault, there was a delay of several weeks before Ms L could buy what she needed to set up her new home. The council processed a second application for an emergency grant and provided the goods Ms L needed. **We decided** this was a fair remedy. We also recommended the council ensure it applies the criteria correctly to future applications for emergency grants, without requiring every applicant to apply for an emergency loan first.

Apology  
Review policy/  
procedure  
Remedial action

Apology  
Review policy/  
procedure  
Remedial action

### Recovery of debt

Miss F was subject to immigration control. She was not allowed to work and could not claim council tax benefit. Her only income was a payment made by the council using its power under S17 of the Children Act 1989 to provide support to a child in need. She got into council tax arrears and the debt was passed to bailiffs. The council's recovery policy did not make clear that the council can, if it sees fit, reduce or write off a council tax debt. The recovery policy also did not refer to the council's internal procedures for considering debt between its own departments. So the council failed to properly consider writing off the council tax debt even though it had a policy obligation to undertake such consideration and a legal power to do so. It also failed to consider whether Miss F was a vulnerable person and failed to investigate her complaint. The council's faults caused Miss F unnecessary distress. **We recommended** the council apologise and write off Miss F's debt for two council tax years, including the cost of summonses; a total of approximately £850. We also recommended the council review both her council tax account for the current year, and the S17 payments it was currently making. We also recommended the council review its processes for liaising with other departments to identify exceptional cases, and devise and publish a policy for dealing with debts owed by people who cannot access public funds.

r  
**Apology**  
**Review policy/  
procedure**  
**Remedial action**  
**Quantifiable financial  
loss**  
e

m

e

d

y

### Recovery of debt

Ms E was issued with a parking ticket which she did not pay. The council passed the debt to its bailiffs and the bailiffs' charges were added to the debt. Ms E made an agreement with the bailiffs to pay by monthly instalments. But the bailiffs then clamped the car. Ms E contacted the bailiff company who apologised and removed the clamp the same day but we found this fault had caused her significant inconvenience as she could not collect her daughter from school. **We recommended** the council pay Ms E £150, to be offset against the debt, to acknowledge the distress caused.

r  
**Apology**  
**Acknowledgement of moderate distress**

Mr V was in arrears on his council tax account and had agreed a payment plan with the council. He was advised that he needed to make sure that his payments reached the bailiffs by the third of each month in order to prevent further action being taken. Mr V did so but bailiffs continued to visit and leave letters threatening seizure of goods. In total 10 bailiffs' letters were issued when they should not have been. This caused significant injustice to Mr V's wife, who became sick with worry and scared to answer the front door. **We recommended** the council apologise and pay Mr V £1,000 to acknowledge the distress caused by the bailiffs' repeated and unnecessary contact. We also recommended the council cancel any bailiff fees arising from the letters, take the debt back from the bailiffs, and monitor payments itself.

e  
**Apology**  
**Remedial action**  
**Acknowledgement of prolonged distress**

Ms Y set up a standing order to pay her council tax. As there was no council tax reference number on the standing order form, payments she made were not allocated to her account. Although the council realised the mistake early on, and Ms Y provided proof of payment several times, it took six years for the council to resolve the problem. In the meantime the council continued to take legal action against her for money she did not owe. **We recommended** the council pay Ms Y £1,800 to acknowledge the distress caused by the many summonses, liability orders and bailiffs letters she had received and for her efforts in pursuing her complaint over a long period. The council also agreed to make changes to its system for dealing with missing payments.

e  
**Apology**  
**Review policy/ procedure**  
**Acknowledgement of prolonged distress**

y



### Recovery of debt

Mrs G had severe mental health problems and was known to the council's community mental health team. She owed just over £5,000 council tax, and after other recovery methods had failed the council obtained a Bankruptcy Order. During the proceedings Mrs G's sister wrote to the council more than once explaining that Mrs G had mental health problems and could not manage her affairs. We found the council had not recorded adequately why the bankruptcy route was chosen, or what checks had been made into Mrs G's circumstances, in particular with the adult social care team. **We recommended** that the council should apply for an annulment of the Bankruptcy Order, and consider how it could recover the debt by other means.

r  
**Apology**  
**Remedial action**

e

Mr T stopped on a Red Route and incurred a parking penalty charge notice. He did not pay the penalty until the council issued an order for recovery. By the time the council received Mr T's payment it had already referred the debt to its bailiffs. The council did not tell the bailiffs the penalty had been paid and so the bailiffs enforced the penalty by clamping Mr T's car early in the morning. Mr T paid the penalty and charges and his car was released straight away. He contacted the council as soon as its offices opened and officers confirmed payment had been made. The bailiffs promptly refunded his charges but there was further fault on the part of the council when it delayed for eight months in refunding the duplicate payment of the penalty. **We recommended** the council apologise and pay Mr T £300 to acknowledge the distress caused to him by the bailiffs' actions, and a further £180 to acknowledge his avoidable time and trouble in pursuing the refund of the duplicate payment.

m  
**Apology**  
**Acknowledgement of moderate distress**  
**Acknowledgement of time and trouble**

e

d

y

### Recovery of debt

Mr H's cheque paid to the council's bailiffs bounced, and the bailiffs levied a fee for this. The bailiffs also charged twice for a visit made on two liability orders at the same time. The council then failed to respond to Mr H's correspondence about this. So Mr H suffered a financial loss and had the avoidable time and trouble of bringing his complaint to the LGO when, if the council had responded to Mr H's letters, it could have resolved the matter itself. **We recommended** the council:

- > remind its bailiffs they may not lawfully charge for bounced cheques when acting on its behalf in collecting council tax debt;
- > refund the wrongly incurred fees;
- > apologise for not responding to Mr H's correspondence;
- > offer a meeting with Mr H to answer his questions about how the remaining debt was calculated; and
- > credit the oldest debt on Mr H's account with £150 to acknowledge the time and trouble caused by its fault.

r  
Apology  
Review policy/  
procedure  
Quantifiable financial  
loss  
Acknowledgement of  
time and trouble

Mr X's son attended a council nursery and the invoices the council sent to Mr X were not correct. There was a shortfall of £50 per month. By the time the council told Mr X about its error he had accumulated a substantial debt without having had the opportunity to plan how to repay it. The council set out a repayment plan of £67 per week. This was onerous for Mr X and failed to take account of the fact that the debt had arisen from council fault. The council's failure to recognise the impact of its fault meant that Mr X then had the time and trouble of bringing his complaint to the LGO. **We recommended** the council met Mr X to devise a more manageable repayment plan. We also recommended the council apologise and pay Mr X £150 (to be offset against the debt) to acknowledge the avoidable time and trouble caused to him by its fault.

m  
Apology  
Remedial action  
Acknowledgement of  
time and trouble

d

y

## Recovery of debt

Ms B incurred two parking penalties. She did not receive the documents about the penalties so was unaware of any debt until the bailiffs arrived to collect the first penalty, following a court order. The bailiffs did not tell the council that they had found Ms B at a different address to that on the warrant, which would have required the council to reapply to court. Ms B contacted the council to find out if she had incurred any other parking penalties and the council told her she had not. This was not in fact the case and the bailiffs arrived in respect of the second parking penalty a matter of days later. Ms B made full payment to the bailiffs in respect of both penalties and began the process of appealing to court. She also complained to the council. The council said it would refund all that she had paid if the court ruled in her favour. When the court granted permission to Ms B to appeal, the council refused to make any refund and wrongly said Ms B had to file new paperwork. It continued to insist that this was the case, failing to follow the correct legal procedure, until after the LGO was involved, six months later.

The injustice to Ms B was significant. The second bailiff visit caused her significant stress and further charges; she lost the opportunity for an early resolution in court; she suffered significant frustration, and the time and trouble of bringing her complaint to the LGO when the council did not make a full refund after telling her it would; and the council's continuing refusal to follow statutory guidance on the appeal process prolonged her uncertainty about the final outcome of her appeal. She was also out of pocket by £1,000 from the penalties and associated charges and fees. The council refunded this, and cancelled the parking penalties, so Ms B avoided the stress of continuing with her appeal. But these actions did not remedy all the injustice arising from its faults. **We recommended** the council apologise to Ms B and pay her a further £650 in recognition of the avoidable stress, frustration, lost opportunity, and lost interest, caused by its faults. We also recommended the council make sure that its staff were fully aware of the correct procedures to follow.

Apology  
Review policy/  
procedure  
Remedial action  
Acknowledgement of  
significant distress

## Recovery of debt

Ms J received a decision that she was no longer entitled to benefits. She appointed a solicitor to appeal against this decision on her behalf. The council did not respond to correspondence from the solicitor about her appeal and refused to consider the appeal because it had not been raised by Ms J herself. The council referred the recovery of Ms J's overpayment of benefits to its bailiffs but it referred the wrong amount. The council also sent Ms J a statement showing a zero balance outstanding. So Ms J did not have clarity about the amount she owed, which was essential to plan her repayment of the debt. **We recommended** the council apologise to Ms J and her representative, and progress an appeal against the benefit decision. We also recommended the council pay Ms J:

- > £300 to acknowledge the distress caused by six bailiffs letters sent to Ms J after her solicitor had requested an appeal, and an additional £50 to acknowledge the avoidable confusion caused by the error in referring the wrong overpayment figure to the bailiffs;
- > £500 to acknowledge the prolonged uncertainty caused by the 18 month delay in the council reviewing its decision on Ms J's benefit entitlement;
- > £125 to acknowledge the impact of the further delay of six months in referring Ms J's appeal to tribunal; and
- > £200 towards Ms J's legal costs. Ms J could have made an appeal and raised a complaint herself, so we did not consider it appropriate to recommend full reimbursement of her legal fees. But the council had entered into frequent correspondence with the solicitor while declining to accept an appeal from him on behalf of Ms J. This added unnecessary and additional cost to Ms J's legal costs.

Apology  
Remedial action  
Quantifiable financial loss  
Acknowledgement of significant distress

m

e

d

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## Adoption and fostering

Mr M had two adopted daughters, E and F. The council removed his adoption allowance for E, and reduced the allowance for F. We found the council had failed to properly consider Mr M's circumstances and failed to make a proper decision to introduce a new policy. **We recommended** the council repay the allowance for E for the missed period, reinstating the allowance until E reached 25 or finished full-time education, whichever was sooner, with an annual review. The council had already put in place a mechanism to make sure no adoption allowance stopped automatically when a child reached 18, and undertaken to check whether other adoptive parents had been similarly affected. We recommended that it also review its information documents to ensure they were clear that payments did not always stop when a child reached 18. With respect to F, it was likely Mr M had in fact benefited from the council's delay in applying new statutory regulations. But we recommended the council seek legal advice and carry out a consultation on the policy of reducing adoption allowances which it had introduced.

Apology  
Review policy/  
procedure  
Remedial action  
Quantifiable financial  
loss

Mr and Mrs J were deregistered as foster carers following a child protection investigation. They appealed, and the independent review recommended that the council should reinstate them. The council accepted the recommendation but did not place any children with them, instead paying them a retainer until it had completed an investigation into their complaint about the conduct of the child protection investigation. The complaint was upheld and the council accepted the findings. The council then decided to deregister Mr and Mrs J again. They appealed, and the independent review again recommended the council should reinstate them. The council's decision on this recommendation should have been made within 12 days but the council did not make it for eight months. It decided to reassess Mr and Mrs J rather than reinstate them. It did not provide clear reasons why it was not accepting the independent review's recommendation. We found this delay, and the failure to provide reasons for the eventual decision, caused Mr and Mrs J avoidable uncertainty about their future as foster carers. **We recommended** the council meet Mr and Mrs J without any further delay to discuss its reasons for reassessing them, and also provide written confirmation of its decision and the reasons for it. We also recommended the council pay Mr and Mrs J £450 to acknowledge the distress caused by the council's significant delay in communicating its decision, and said that any further delay would justify an additional payment.

Apology  
Remedial action  
Acknowledgement of  
moderate distress

## Adoption and fostering

Mr and Mrs V were approved as prospective adoptive parents for one child aged between one and six years. The council placed two siblings, aged six and seven, with them. Both children had serious and long term special needs but the council had not carried out a proper assessment of those needs before placing the children with Mr and Mrs V. The council was not clear with Mr and Mrs V that their home was not big enough, or that it would not contribute to the costs of moving. There was confusion between the council and Mr and Mrs V's home authority about who should be providing support, and the council did not put in place therapy which the adoption panel had recommended should start before the children were introduced to prospective adopters. The council had accepted the difficulties caused to Mr V's work arrangements by the unexpected demands of the children and paid a reasonable contribution to these unexpected expenses. It had also paid £5,000 towards the costs of moving and as Mr and Mrs V had expected to move anyway when the children reached secondary school age, this was a fair contribution. But it had not acknowledged the impact of its other faults. We found that if the council had properly assessed the children's needs before the placement began, it was likely it would have paid a higher allowance for their care from the outset. Its failure to do so meant that Mr and Mrs V had had additional expenses of cleaning and repairs which meant they could not pay for holidays and family days out. We also found that if therapy had been started as recommended, and the children's social worker had visited regularly, it is likely the children's difficulties would have been mitigated, reducing Mr and Mrs V's stress and distress.

**We recommended** the council backdate the higher allowance to the start of the placement, minus the sum of £500 which the council had already paid for cleaning. We also recommended the council pay Mr and Mrs V a further £2,000 to acknowledge the additional and avoidable distress over a period of 18 months caused by its faults, including the inconvenience of having to move earlier than expected. We also recommended the council review its procedures to ensure that it integrates the advice of the adoption panel into its adoption support plans.

r  
**Apology**  
**Review policy/  
 procedure**  
**Quantifiable financial  
 loss**  
**Acknowledgement  
 of exceptional and  
 prolonged distress**

m

e

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y

## Adoption and fostering

Ms Z fostered a child, K, for several years. The council had delayed in adopting a 'staying put' policy for children leaving care and when K went to university (whilst remaining in Ms Z's home) the council calculated a new weekly support rate instead of paying her the weekly amount it had already calculated for her pathway plan. The council also failed to explain to Ms Z what financial and other support would be available to her if her role changed from foster carer to landlord, so she did not have the necessary information to be able to make an informed decision when agreeing that K could remain with her. She suffered financial loss, and she also suffered stress and frustration as she tried, unsuccessfully, to find out from the council what support would be available; information that should have been immediately available. When Ms Z complained, the council sent her a copy of the response it had made to a complaint from K, instead of addressing the separate issues Ms Z had raised. The council then refused to investigate her complaint further. If the council had investigated the complaint, it was likely it could have resolved it and Ms Z would then have avoided the further time and trouble of bringing the matter to the LGO.

**We recommended** the council provide K with the accommodation allowance it had calculated in her pathway plan, backdating any underpayment to date, so that she could repay Ms Z. We also recommended the council pay Ms Z £350 to acknowledge the distress its faults had caused her. Finally we recommended the council prepare and introduce a 'staying put' policy as a matter of urgency.

r  
**Apology**  
**Review policy/  
 procedure**  
**Quantifiable financial  
 loss**  
**Acknowledgement of  
 moderate distress**

m

e

d

y

## Child protection

Mr H agreed to move out of the family home while the council assessed whether he was a risk to his children. There were delays in the council's assessment, which eventually concluded that Mr H did not present a risk. Mr H had had to stay away from home for between four and eight weeks longer than he would have done if the council had carried out the assessment, and communicated the outcome, promptly. Mr H had not incurred any additional living expenses during this period and although he said he had lost his job because of the council's faults, there was no evidence to support this. The council had already apologised to Mr H and undertaken to review its work allocation procedures as a result of its own investigation of his complaint. **We recommended** the council also pay Mr H £300 to acknowledge the distress caused to him by the unnecessary delay in returning to the family home.

Apology  
Review policy/  
procedure  
Acknowledgement of  
moderate distress

Mr L is the business partner of an adult who works with children. Concerns were raised about the behaviour of his business partner and the council began a safeguarding investigation. The council considered Mr L's suitability to work with children as part of the same investigation, when it should have considered the issue separately. It also did not give him the opportunity to respond to an allegation made about him. During the investigation Mr L was suspended as a school governor. He was reinstated when the then Independent Safeguarding Authority confirmed he was still suitable to work with children. The council in its own investigation of Mr L's complaint accepted there had been flaws in the safeguarding investigation which had caused Mr L distress. It offered him a payment of £500 to remedy this. Mr L did not feel this adequately reflected the distress caused to him over a period of three years. **We decided** the payment of £500 was a fair remedy, because a significant amount of distress inevitably arises from a safeguarding investigation. The fault was in how this was carried out, not the decisions to investigate and make the referral to the Independent Safeguarding Authority. And his reappointment as a governor ensured that any damage to his reputation was limited. So the injustice being remedied was the additional distress arising from being deprived of the opportunity to respond to the allegations.

Apology  
Acknowledgement of  
significant distress



## Child protection

Ms G made two complaints to the council. One was about a safeguarding investigation into her actions as a parent. The second was about historic events dating from her time as a child in the council's care. There were significant delays in the investigation of both complaints. The council's investigation of the historic complaint identified faults in the professional practice of council staff while Ms G was in its care, and also flaws in case recording. The council did not accept the findings of the investigation but failed to provide reasons for this. We found the delays caused Ms G avoidable frustration and distress, and the failure to provide reasons caused her uncertainty about the outcome of her complaint. **We recommended** the council apologise, reconsider the findings of its complaint investigation and provide a written response with clear reasons, and undertake a thorough review of its complaints handling processes to prevent similar delays in the future. We also recommended the council pay Ms G £250 to acknowledge the impact on her of its faults in considering her complaints.

Apology  
Review policy/  
procedure  
Remedial action  
Acknowledgement of  
moderate distress

Mr J's son was the subject of a child protection investigation which included a core assessment. Mr J complained to the council that the core assessment contained errors and did not include parental views. The council upheld his complaint and agreed to correct the errors and add a document setting out Mr J's views to the file. It also agreed to review the assessment and support package. But there was a delay of five months in placing Mr J's addendum on file and the council said Mr J would have to pay a charge for this. There was also a delay of eight months in carrying out the review. The council did provide additional interim support during this period so we found these delays had caused Mr J frustration and uncertainty about whether the council would actually resolve his complaint in the way it had agreed to. **We recommended** the council should add Mr J's document to the file within 28 days, without charge, and write to confirm it had done so, and pay Mr J £200 to acknowledge the avoidable frustration arising from its delays. During the investigation we had also found the council had no records of letters it said it had sent to Mr J, so we recommended the council write to Mr J explaining what steps it would be taking to ensure its staff were properly trained in their duty to record all dealings with service users.

Apology  
Review policy/  
procedure  
Remedial action  
Acknowledgement of  
moderate distress

## Children in care and leaving care

R, a young person with autism, was looked after by the council. We found that the council put him in placements that could not meet his needs, moved him from one placement to another too often, and placed him too far away from his family for contact to be easily arranged. The council failed to monitor his care properly and took too long to take action when he complained about things. At some placements he suffered abuse. For long periods he had little or no education. **We recommended** that the council pay R £12,000, to be held in trust, to acknowledge his lost education and the significant distress, over several years, arising from its faults. We recommended the council review R's files and arrange for a fresh assessment by an independent medical expert, deferring any further decisions until the outcome of that assessment. We also recommended the council review its procedures and its provision for children with autism.

r  
**Apology**  
**Review policy/  
 procedure**  
**Remedial action**  
**Acknowledgement of  
 loss of education**  
**Acknowledgment of  
 exceptional prolonged  
 distress**

Ms C became homeless at the age of 16 when she gave birth to a son. She asked the council for help. The housing department and her health visitor both made referrals to the children's services department. Children's services made an initial assessment of her son, but took no further action about this, and did not carry out any assessment of Ms C herself. The housing department housed Ms C and her son. Ms C struggled, and three months later she attempted suicide. The council began a child protection investigation regarding her son. The council took Ms C's son, and, a year later, her newborn daughter, into care. The children eventually moved to live with a relative.

m  
**Apology**  
**Quantifiable financial  
 loss**  
**Acknowledgement of  
 significant prolonged  
 distress**

We found the council had failed to assess Ms C as a child in need when she asked for help at the age of 16. Had it done, the duty to provide her with suitable accommodation would have fallen to the children's services team not the housing department, and Ms C would not have had to pay rent and council tax. As it was, she incurred avoidable debts totalling £2,500. She also did not acquire the status of a 'looked-after' child and the leaving care benefits this would have brought. The council did make some payments to Ms C, but she did not receive the full support to which she was entitled. The council had offered to pay Ms C £3,500 to remedy the injustice arising from its faults - £2,500 to repay the debts and £1,000 to acknowledge her distress. **We decided** this was a fair remedy for the avoidable expenses, and the significant distress, she had suffered.

d  
 y

## Special guardianship and kinship care

Mrs M was looking after her niece, N, as N's mother was an alcoholic who could not look after her, and her father had suddenly disappeared. Mrs M complained that she was not receiving the foster carer's allowances and support she was entitled to. The council said that she was not entitled to this support because she was not an agreed foster carer, but had offered to take in her niece, which was defined as kinship care. We found that the council had asked Mrs M to look after her niece, and had not explained to her that it would treat it as a private arrangement, not acquiring the rights of financial and on-going support, unless she became an agreed foster carer. **We recommended** the council change its procedures, giving families taking in children proper information, and offer Mrs M the opportunity of becoming an agreed foster carer, with backdated allowances.

Apology  
Review policy/  
procedure  
Remedial action  
Quantifiable financial  
loss

Mrs D agreed to care for her nephews for a week when their parents were arrested. The children stayed with her for several months but when Mrs D asked the council for support, it said this was a private arrangement. Mrs D complained. The council's investigation found that Mrs D had been misled and coerced by the children's social worker. **We recommended** the council pay Mrs D the allowances she should have had during the period her nephews were living with her, as she had had to meet the expenses of caring for them from her own pocket.

Apology  
Quantifiable financial  
loss

## Education out of school

Ms V moved house into the council's area and applied for a school place for her daughter W. One of the schools she named on the application form was in a neighbouring council's area. The home council contacted the neighbouring council to check availability in that school. But it did not follow this up when the neighbouring council did not respond. W did not receive an offer of a place for nine weeks. This was much longer than the 20 school days the home council's policy said an in-year application should take. So W missed four weeks of education, and Ms V had to constantly chase both councils about the school place. With no place on offer, Ms V was then put to the trouble of complaining to the LGO. **We recommended** a payment of £300 for the lost education, and £50 to acknowledge Ms V's avoidable time and trouble in pursuing officers and making her complaint.

**Apology**  
**Acknowledgement of loss of education**  
**Acknowledgement of time and trouble**

L was assaulted at school. She transferred to another school but suffered a further assault which left her too frightened for her safety to attend. The council did not acknowledge it had a duty to provide education and L missed a total of five terms. Her father was put to a significant amount of time and trouble in corresponding with the council to try to resolve the matter. **We recommended** the council apologise to both L and her father and pay L £6,000, to be used for educational purposes, for her lost education, and £200 to acknowledge the distress arising to her from fault by the council at a time when she was already vulnerable. We also recommended the council pay her father £600 to acknowledge his avoidable time and trouble in trying to get the council to fulfil its statutory duty.

**Apology**  
**Acknowledgement of loss of education**  
**Acknowledgement of moderate distress**  
**Acknowledgement of exceptional time and trouble**

## Education out of school

Mrs T's son Y had a statement of SEN because of global development delay. The council failed to provide him with a school place (or suitable full-time education) for 16 months after he reached compulsory school age, and failed to implement the provision on his statement. Mrs T had to continually negotiate with and challenge the council during this period, causing her distress which would have been avoided if the council had acted in accordance with the law and SEN Code of Practice. And the loss of early education caused Y further delays in his development and learning. There was some part-time provision over two terms. The council had already identified a suitable school place and arranged for full-time classroom support by the time we made enquiries. **We recommended** that in addition, the council pay Mrs T £3,600, to be used for educational purposes, for the three terms in which Y received no education at all; and a further £500 to acknowledge her time and trouble in trying to get the council to comply with the law and statutory guidance.

Apology  
Remedial action  
Acknowledgement of  
loss of education  
Acknowledgement of  
exceptional time and  
trouble

## School admissions and school appeals

Ms R moved house and made an in-year application for a primary school place. The council said it had no school vacancies. It did not offer any place at all for more than a term, and then offered a place at a school well beyond the statutory walking distance. During this period the council did not offer any right of appeal or any alternative education. We found the council should have considered the application under its Fair Access Protocol for hard-to-place pupils, and considered the child as an 'excepted pupil' if there were no vacancies. **We recommended** the council pay Ms R £1,200, to be used for educational purposes, for the missed term of education. We also recommended the council refer the case to its fair access panel to consider whether the allocated school was within a reasonable distance. The council did so and allocated a place at a nearer school.

Apology  
Remedial action  
Acknowledgement of  
loss of education

## School admissions and school appeals

E was 14 and when her family moved house the council failed to allocate her a school place. We found the council had failed to apply its Fair Access Protocol properly and because of this E was out of school for two terms. We would normally recommend a sum of £2,400 for two terms of missed education. In this case, **we recommended** the council use this sum to buy E a laptop with educational software, and provide catch-up tuition, and pay her the balance. We recommended the same remedy for similar complaints about this council.

r  
**Apology**  
**Remedial action**  
**Acknowledgement of loss of education**

Mrs F said that she did not get places for her children at her preferred school because the council made a mistake when it measured the home-school distance, and did not take account of a connecting path near to her home. She said the appeal panel did not properly consider this. The council carried out a site visit in response to our enquiries. It agreed the connecting path should be included in its distance calculations. The council recalculated the home-school distances and decided that Mrs F's children should have been offered places at her preferred school. **We decided** that the offer of places at the school was a fair remedy for the complaint.

e  
**Apology**  
**Remedial action**

Ms J appealed for a place in year 3 for her daughter Z. The panel's decision that her admission would cause prejudice to the school was based solely on the physical size of the classroom. But the information provided to the panel about this was wrong. **We recommended** a fresh hearing with a different clerk and panel.

m  
**Apology**  
**Remedial action**

Mr N identified a shorter route to school than that used by the council to calculate home-school distance for admissions purposes. We found the council had departed from its measuring procedure because of the unusual location of Mr N's house, and in fact Mr N's shorter route complied with the procedure. The error did not deprive Mr N of a place at the school but rectifying it did give Mr N a higher position on the 'continued interest' (waiting) list. **We recommended** the council use the shorter route.

e  
**Apology**  
**Remedial action**

## School transport

Although Mrs Y and her son D lived within the normal walking distance to school, D had disabilities that made it impossible for him to walk unaccompanied, and Mrs Y's disabilities made it impossible for her to accompany him. We found that the council had failed to consider whether there was an exceptional need to award free school transport. When it eventually did consider the point, it failed to do so properly (including failing to consider its duties to the family under equalities law) and delayed in completing the process. **We recommended** the council provide school transport, review its policies and procedures, and pay Mrs Y £300 for the avoidable distress caused by the council's faults.

Apology  
Review policy/  
procedure  
Remedial action  
Acknowledgment of  
moderate distress

J is autistic with a statement of SEN. Her school was more than three miles from home so the council provided transport in the form of a place in a minibus. When J reached the age of 14 the council decided she could travel to school by public transport and issued her with a free bus pass instead. J's parents appealed, saying J could not travel safely by bus on her own. The council agreed she could not travel unaccompanied, but said it would only provide the minibus one way because a parent was available to accompany her on the journey home. It refused to fund the cost of the parent's travel. We found that the council's duty to the child, which it had accepted was an 'eligible child', was to provide suitable free transport, which this arrangement was not. **We recommended** the council provide free transport (either by paying the cost of the parent's travel or by reinstating the minibus place); reimburse J's parents for the cost of the bus fares incurred to date; and review and revise its transport policy taking into account the law and national guidance.

Apology  
Review policy/  
procedure  
Remedial action  
Quantifiable financial  
loss

## Special educational needs (SEN)

C was 16 years old and had autistic spectrum disorder. He needed significant levels of support at school. We found the council delayed in providing services, planning his transition to 16+ education, and responding to his mother's complaint. We also found that inaccurate assessments were not amended in a timely way. These faults caused anxiety and uncertainty about C's future services; frustration with the council which led to a breakdown in trust and relations; and avoidable time and trouble in pursuing both the service needs and the complaint. The council had already apologised for failings identified, and it took action to set transition planning in progress when it received our enquiry letter. **We recommended** the council pay C £750 to acknowledge the impact of its faults over a two-year period. The remedy would have been higher but there were times (due to her frustration) when C's mother did not engage with professionals, and she also refused interim services offered, although her reason for this was that C did not cope well with change.

Apology  
Remedial action  
Acknowledgement of  
loss of education  
Acknowledgement of  
moderate distress

J had a statement of SEN. When her family moved to a new area and J changed schools, the council failed to issue a new statement of SEN for two terms. J missed some provision because of this. **We recommended** the council fund additional provision for J to make up for what she had missed, and pay her mother £250 to acknowledge the time and trouble she had spent chasing officers and making her complaint.

Apology  
Remedial action  
Acknowledgement of  
moderate time and  
trouble

Mr K's daughter M had a statement of SEN which included provision of a Teacher of the Deaf (ToD). Her regular ToD had a planned absence and the council failed to arrange suitable cover. When Mr K complained, the council did arrange suitable cover. The regular ToD returned to work but when she had a second planned absence the council again failed to arrange suitable cover in time. The school did provide other extra support, but M missed six sessions with a ToD and Mr K had the avoidable stress and anxiety of having to pursue the council a second time. **We recommended** the council pay Mr K £150 to acknowledge this. We also recommended the council review its support services for hearing impaired and deaf children, taking account of the views of their parents.

Apology  
Review policy/  
procedure  
Acknowledgement of  
time and trouble



### Special educational needs (SEN)

D has a sensory impairment. The council failed to plan holistically for her transfer to post-16 education, so she lost the opportunity to start on time at an independent specialist college, a placement recommended by all the professionals working with her. Fault in its placement and appeal processes caused further delay in resolving the matter. **We recommended** the council arrange for D to transfer to the college at the start of the next academic year. We also recommended the council pay D £1,500 for the loss of three terms of specialist provision. The figure reflects the fact that D did receive some education during that period, but it fell significantly short of meeting her needs.

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Apology  
Remedial action  
Acknowledgement of  
loss of education

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### Anti-social behaviour

Mr W complained the council had not acted properly to stop anti-social behaviour on land immediately behind his home. The council's actions had been unsuccessful and Mr and Mrs W had to keep calling the police and the fire brigade. As a result of investigating Mr W's complaint, the council sought advice about planning permission for an industrial fence. When the planning authority said this type of fencing was unlikely to get planning permission, the council did not pursue the matter further, or provide Mr W with any updates about its intentions. Mr and Mrs W had believed the situation would soon be sorted but instead experienced continuing distress.

**We recommended** that the council provide Mr W with a written apology for not providing him with regular updates about what actions it was taking to sort out this issue. We also recommended the council either:

- > submit a planning application for a fence without further delay, and keep Mr W informed of its progress; or
- > within a reasonable timescale (3 months maximum), explore further possible fencing options with Mr W and the planning authority. If the only fencing proposal likely to be successful would not be fit for purpose (for example, low and decorative, and therefore unlikely to reduce the anti-social behaviour) it should write to Mr W and explain the reasons why it will not use public funds to submit a planning application that is unlikely to be successful.

Mr A complained that the council took too long to dispose of a derelict property that it owned next door to him, failed to keep it secure from trespassers, and failed to maintain trees along the boundary. We found that the council had failed to give priority to disposing of the property, and the sale had been delayed unnecessarily for six months. During this period Mr A and his family had suffered more nuisance and worry than they need have done. **We recommended** the council market the property quickly, do work to the trees, pay Mr A £500 to acknowledge the distress arising to him from the delay, and start a review of its procedures for disposing of residential properties in its ownership.

r  
**Apology**  
**Remedial action**

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m

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**Apology**  
**Review policy/  
procedure**  
**Remedial action**  
**Acknowledgement of  
loss of amenity**

y

## Cemeteries and crematoria

Mr K’s grandfather’s ashes were buried in a double plot in a cemetery 30 years prior to Mr K’s complaint. Rows were marked, but at that time the individual graves (30cm by 30cm) were not. When his grandmother died, Mr K asked the council to bury his grandmother’s ashes in the same grave. On the morning of the interment, council workers visited the cemetery to open the plot. They could not find it but were unable to tell Mr K this until the family arrived for the ceremony. This caused Mr K and his family significant distress. The council investigated Mr K’s complaint and found that record keeping and plot marking were poor. It worked with the families of those buried in neighbouring plots to identify Mr K’s grandfather’s plot, and arranged for it to be opened for his grandmother’s ashes. The council apologised, waived the burial fee, and offered to pay for a memorial stone and for the travel costs of the family to attend a new interment. The council also offered an alternative plot for burial if the family preferred this. It changed its procedure so plots are now checked a few days before an interment. **We decided** this was a satisfactory remedy for the distress caused by the council’s faults.

r  
**Apology**  
**Review policy/**  
**procedure**  
**Remedial action**

e  
 m

## Environmental health

Mr H complained about the council’s handling of his complaints about noise from a factory next door. A council officer investigated but concluded that the owners of the factory had a defence against the noise complaints, so he could take no action. Three months later a new officer took over the post, and she concluded that there was a problem. She carried out testing and agreed a programme of works to reduce noise, but the owners delayed in carrying this out. The council prepared to serve a noise abatement notice but did not do so because production at the site ended. We found an inconsistency of approach between the two officers who dealt with Mr H’s complaint. The second officer took the correct approach and identified measures that could be taken. So Mr H suffered avoidable noise nuisance for a period of three months. **We recommended** the council pay Mr H £500 for his lost amenity in this period, and £500 towards the professional fees he incurred after the first officer wrongly concluded the council could not take action.

**Apology**  
**Quantifiable financial**  
**loss**  
**Acknowledgement of**  
**loss of amenity**

d  
 y

### Environmental health

Mr S complained that his local council failed to take adequate action in response to his complaints about odour and noise from the restaurant next door to him. We found that the council acted properly when he first reported the cooking smells. Officers visited the site, got evidence of a statutory nuisance and served an abatement notice on the restaurateur. But we were not satisfied that the council took enough action to ensure that the notice was then complied with. The council did not keep proper records of the complaints that Mr S made, or of the visits that it says that it made. The council issued another abatement notice, a year after the original one, and started legal action against the restaurant to stop the nuisance. If the council had kept proper records, it could have started this action a year sooner. **We recommended** the council ensure that in future it keeps detailed records of all letters, calls and visits about such complaints. We also recommended the council pay Mr S £2,000 to acknowledge the loss of amenity caused by its delay in taking effective action.

r  
**Apology**  
**Review policy/  
procedure**  
**Acknowledgement of  
loss of amenity**  
e

Mr A reported a squirrel infestation to the council. The council carried out an initial visit within five working days, and subsequently carried out baiting visits and proofing works. But over a period of seven weeks it did not tell Mr A what action it was taking. Mr A reported the continuing problem and the impact it was having on his sleep and general health, since he had a medical condition exacerbated by stress. He asked the council's officer to knock on his door when attending, or to update him by telephone or email if he was not at home. He continued to be disturbed by the noise, which occurred day and night, and eventually spent all his time in his kitchen, sleeping in there on a camp bed. The council then delayed for six weeks in responding to Mr A's complaint and did not tell him how he could escalate it to the next stage. These failings caused Mr A distress and put him to some time and trouble. **We recommended** the council apologised to Mr A and pay him £250 to acknowledge the avoidable distress caused by the council's failures of communication.

m  
**Apology**  
**Acknowledgement of  
moderate distress**  
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y

### Taxis and private hire vehicles

Mr P, a licensed taxi driver, complained that the council issued him with a warning letter about his behaviour, following a complaint from a member of the public, without first obtaining his views. The council accepted that it had been wrong to do this, and that it had not followed its own procedures for dealing with such complaints. It apologised to Mr P and paid him £150 to acknowledge the upset he had been caused. **We decided** this was a satisfactory remedy.

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**Apology  
Acknowledgement of  
moderate distress**

Mr T is a taxi driver. When he complained about the behaviour of taxi marshals, the marshals made counter allegations. The council did not properly consider Mr T's complaint, or give him an opportunity to refute the allegations, before asking its licensing sub-committee to decide whether to revoke Mr T's licence. The council also delayed in taking statements from witnesses and did not ensure it took them in an independent and transparent way. We could not conclude these faults affected the final outcome. But we found the faults had caused Mr T uncertainty about the fairness of the outcome. This had effectively been remedied by our investigation.

e  
**Apology  
Review policy/  
procedure**

**We recommended** the council:

- > apologise to Mr T;
- > keep better records of complaints made about taxi drivers and the action taken to investigate them;
- > give all parties to a complaint equal opportunity to provide evidence;
- > provide clear reasons for deciding to refer a case to the licensing sub-committee;
- > review its procedures for taking witness statements; and
- > send copies of minutes and decisions to affected parties within a month of the relevant hearing.

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### Waste management

Mrs J had a medical condition which meant she could not move her bins to and from the roadside collection point. She had received assisted collections at her former address. She asked for the same service at her new house. On many occasions her bin was not emptied. At other times, it was emptied but not moved back to the storage area. On returning home she had to try to move the bin herself so she could get her car back on her property.

The council and its contractors accepted there were problems with the bin collections which occurred intermittently over a period of more than a year and caused Mrs J distress and inconvenience. Mrs J's main concern was to have a consistent assisted bin collection. By the time we investigated, the council had already taken steps to ensure it did not miss her bin in the future. **We recommended** the council apologise and pay Mrs J £100 to acknowledge the impact of its faults. In different circumstances we would not have recommended a financial remedy. But the impact of the council's faults was significant in this case, because of Mrs J's medical condition, and because of the council's repeated failure to resolve the complaint over such a long time.

r  
**Apology**  
**Acknowledgement of moderate distress**

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## Homelessness

Mr S left home when he was 17 years old following problems with his stepfather. He told the council he had been thrown out of the family home and was homeless. He was given a housing register application form to complete rather than a homelessness application form. The council did not enter this information on its housing computer system for two months. The council then failed to identify that Mr S wanted to make a homelessness application. Mr S had to stay with different friends and move around frequently for a total of three months. By the time the council's mistake came to light Mr S was 18 and so he was no longer in a priority need group. So he had lost a crucial opportunity to secure settled accommodation and support services. **We recommended** the council pay Mr S £2,000. £1,000 was to acknowledge the three-month period he was without suitable accommodation, and his particular vulnerability because of his age, and £1,000 to acknowledge the significance of the lost opportunity to obtain housing. We also said the council should review the service it provides to young people to ensure that they receive proper housing assessments.

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**Apology**  
**Review policy/  
 procedure**  
**Acknowledgement  
 of loss of suitable  
 accommodation**  
**Acknowledgement of  
 significant distress**

The council placed Mr Y and his daughter in bed and breakfast accommodation while it considered their homelessness application. It arranged for their belongings to be put into storage. Five months later the council decided it did not have a duty to accommodate Mr Y. The council then told him that, as its duty to accommodate him had ended, it was no longer required to look after his belongings. After contacting Mr Y the council arranged for the belongings to be disposed of. We found that the council was wrong to tell Mr Y that once its housing duty to him had ended, it was no longer responsible for looking after his possessions. The duty to look after possessions continues until the council considers they are no longer at risk of loss or damage, even if its housing duty has ended. In this case, Mr Y said he was still homeless and had nowhere to store his belongings. **We recommended** the council pay him £6,000 (£5,000 for the value of the possessions and £1,000 to acknowledge the distress and inconvenience arising from their disposal) and review its procedures.

m  
**Apology**  
**Review policy/  
 procedure**  
**Quantifiable financial  
 loss**  
**Acknowledgement of  
 severe distress**

## Homelessness

Miss J told the council she was too frightened to return to her home, because of harassment from her neighbour. The council thought she would not meet the criteria to qualify as homeless so it did not take a homelessness application from her. This was effectively a decision about the outcome of a homelessness application without the benefit of a right of appeal. When the council did accept Miss J's homelessness application eight weeks later it found she was homeless and in priority need. Miss J did not find out for another two weeks that she was entitled to bid in the highest priority band. During that period only one property became available on which a bid from Miss J would have been successful. If the council had taken a homelessness application at the start, though, Miss J would have been able to bid on properties eight weeks sooner. We found it was more likely than not she would have bid unsuccessfully during that period, but the lost opportunity to change her situation was an injustice to her. **We recommended** the council pay Miss J £250 to acknowledge that lost opportunity.

Apology  
Acknowledgement of  
moderate distress

Mr S asked the council for help after being made homeless at the age of 17. There was initially a dispute between the housing team and the children's services team about who should accommodate him. The council then offered him interim accommodation. But when he returned to the council on the Monday, having just had his 18th birthday, the council said it would not help him any more because he was now an adult. We found the council did not act with urgency when Mr S asked for help after being made homeless, did not give reasonable notice of its intention to discontinue interim accommodation, and did not properly consider exercising its discretion to extend the provision of interim accommodation. There were then delays in considering his homelessness application and he had to spend four weeks sleeping on friends' sofas before finding a place in a hostel.

**We recommended** the council apologise to Mr S and pay him £500 to acknowledge the additional stress its failings caused at what was already a difficult time. The figure reflected the fact that Mr S did not have to resort to sleeping outside during this period. We also recommended the council review its joint working protocol to ensure a client-centred approach, and review its standard paragraphs to ensure it makes applicants aware of their right of appeal. Finally we recommended the council should also make officers aware of the need to consider all relevant circumstances when making a decision to extend or discontinue interim accommodation.

Apology  
Review policy/  
procedure  
Acknowledgement  
of loss of suitable  
accommodation



## Homelessness

Mr X and his two children were evicted from private rented accommodation. Mr X made a homelessness application to the council. The council placed them immediately in nightly let accommodation, consisting of a self-contained flat in a modern purpose-built block. The building was not secure and it was poorly managed and maintained. Mr X complained to the council, which agreed to move him to alternative accommodation, and to take action to improve conditions in the block. But two years later the council had not yet re-housed Mr X and his family, and conditions in the block had not improved. We found the council had not provided residents with accommodation that met the minimum property standards set out in its agreement with property providers, or taken effective action to improve the situation. Because of this, Mr X and his family had lived for more than two years in unsatisfactory housing conditions.

**We recommended** the council:

- > search for suitable alternative accommodation for Mr X and his family, taking account of his preference for a property near his children's school;
- > search for suitable alternative accommodation for the other residents it had placed in the block;
- > work with the managing agents to find ways to improve the security and management of the block;
- > pay Mr X £750, which would be credited to his rent arrears, to acknowledge the impact on him and his family from living in unsatisfactory housing conditions. In arriving at this figure we took into account that:
  - Mr X's flat was of a reasonable standard;
  - the defects were all in the communal areas of the block;
  - the problems had persisted for a significant period;
  - it was not certain how much longer Mr X and his family would have to wait before they were offered suitable accommodation.

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Apology  
Remedial action  
Acknowledgement  
of loss of suitable  
accommodation

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## Housing adaptations

Mr A complained that the council had delayed arranging to adapt his home. The investigation showed that it took eight months to assess his needs and a further six months to carry out the work. This was within the time limits the council had set itself, but we criticised the council for having time targets which allowed undue delay to occur. If the council had acted correctly the adaptations would have been completed eight months sooner. During this period Mr A could not get up and down stairs unaided. **We recommended** the council pay Mr A £1,250 to recognise the eight month delay in carrying out the adaptations to his home. We also asked the council to review its resources, targets and procedures so that cases were normally allocated to an occupational therapist within three months of referral.

r  
**Apology**  
**Review policy/  
 procedure**  
**Acknowledgement  
 of loss of suitable  
 accommodation**  
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Ms A successfully bid on a council property and the council assessed the property for adaptations to meet her disabled husband's needs. She complained that it took the council too long to arrange the adaptations. We found that unless the family had been able to move into an already suitably adapted property there would always have been some delay in the works being assessed, raised and completed. But the council should have carried out the initial survey as soon as Ms A's bid was successful, rather than waiting until the day before Ms A moved in. If it had done, the works would have been completed sooner. Until the works were complete, Mr A had to sleep in the living room and could not access a bath or shower. **We recommended** the council pay Ms A £500 to acknowledge the avoidable period of six weeks that her household was without the benefit of the adaptations.

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**Apology**  
**Acknowledgement  
 of loss of suitable  
 accommodation**  
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Mrs X had two strokes and she could not get upstairs, so she needed a downstairs bathroom. She asked for adaptations but it took 10 months for the council to carry out assessments and make a formal recommendation to the housing authority. During this period Mrs X stayed with her daughter but she was frustrated by the delay in being able to resume living independently. **We recommended** the council pay Mrs X £500 to acknowledge the avoidable distress caused to her by its error.

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**Apology**  
**Acknowledgement of  
 prolonged distress**  
 y

## Housing adaptations

Mr and Mrs L applied to the council for help in adapting their home, which they had rented for over 20 years, to enable Mr L, who suffered a degenerative medical condition, to access bathing facilities. Two occupational therapists assessed him as needing an extension to the house so he could be cared for and bathed. The council's assessment was that the extension was necessary and appropriate to meet the applicant's needs. Planning permission was granted for the extension.

The council then refused the grant application, indicating that this was because Mr and Mrs L were licensees, not tenants or home owners. It offered alternative housing, and installed a stair lift and a wet room, but continued to refuse the extension originally envisaged.

Mr and Mrs L felt they were misled by the council into believing they had to consider moving to a council-owned property, although they did not want to move. The current arrangements made the home cramped, affecting the whole family. They did not think any of the council properties offered had been suitable, and said it was unfair they were being treated differently from a home owner.

We found the council was at fault in refusing the grant as it did so on grounds that were not permitted in law. **We recommended** the council:

- > pay Mr and Mrs L £5,000 to acknowledge the exceptional distress and inconvenience caused by the council's error;
- > pay Mr and Mrs L £250 for their avoidable time and trouble in pursuing their complaint;
- > engage an independent occupational therapist to review Mr L's current needs;
- > consider the occupational therapist's conclusions;
- > provide funding for any provision identified;
- > provide funding for respite care for the couple while any works are completed;
- > review its procedures; and
- > provide training to ensure that staff are aware of what is appropriate for considering applications for disabled facilities grants.

r  
**Apology**  
**Review policy/  
 procedure**  
**Remedial action**  
**Acknowledgement of  
 exceptional prolonged  
 distress**  
**Acknowledgement of  
 significant time and  
 trouble**

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## Housing allocations and transfers

Ms F placed a bid for a property and had the third highest priority out of those who bid for it. The council arranged a viewing but Ms F could not attend. Both bidders with higher priority than Ms F refused the property. The council arranged a further viewing, which Ms F was able to attend. Ms F had the highest priority of those invited to attend and was told she would be offered the property should she choose to accept it. However, the bidder with the second highest priority was offered the property and accepted it.

The council explained this situation arose because the officer attending the viewing mistakenly believed that Ms F was still third in priority as the paper work he had was incorrect.

Ms F felt obliged to accept the alternative property the council offered as she had health problems and had been living in a refuge for 19 months. Although the flat is of a similar size and standard to the one she lost it does not have all the same amenities and is not in the same location. It is not in her first area of choice and does not have a garden, carpets or cooker. Ms F had to live without a cooker for seven months and had to borrow money from friends to buy flooring and carpets which she is repaying.

The council had already apologised, made Ms F a direct offer and awarded her £100. **We recommended** it pay a further £500 to acknowledge the benefits of the property she lost.

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Apology  
Remedial action  
Acknowledgement of  
significant distress

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m  
e

Miss C and her mother Mrs C complained the council did not properly consider medical and other information in support of their housing application. Miss C had been assaulted in the property in which they live. The council failed to deal with her request for increased priority properly. It did not seek any medical information or put the case to its occupational therapy team as its policy required. It also failed to communicate the outcome of a medical questionnaire she completed. There was a delay deciding to give her an increase in housing priority.

We did not conclude Mrs C would have received a housing offer but for the fault. She had some priority already and had never placed any bids for properties. Mrs C and Miss C had made their own situation worse by not returning promptly a housing application form. **We recommended** the council pay £250 to acknowledge Mrs C and Miss C's avoidable distress arising from its failure to handle the situation sensitively and in accordance with its procedures.

Apology  
Acknowledgement of  
moderate distress

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y

## Housing allocations and transfers

Mr and Mrs R lived in a small two bedroom flat with their four young children. The two youngest children slept in their parents' bedroom. The room shared by the older children was exceptionally small (only 6.7 sq m). The council's allocations policy allowed staff to exercise discretion to adjust the number of bedrooms required by a household if the bedrooms in the property were particularly small. Mrs R argued the bedrooms were so small that the family should be treated as requiring two bedrooms to relieve the overcrowding and should therefore be placed in the second highest priority band for rehousing. She asked officers to visit the property to see how small the bedrooms were but they declined to do so stating it would have no effect on her priority.

After Mrs R complained to us the council checked the size of the children's bedroom and assessed it as being only large enough for one child over five or two children between one and five. It therefore concluded the family were lacking two bedrooms and placed Mrs R's application in the second highest priority band. It backdated this to when the third child was born. We concluded that if the council had considered the size of the bedroom when Mrs R asked it to, the family could have been re-housed much sooner.

The family were living in crowded conditions for much longer than necessary and Mrs R was suffering from depression. **We recommended** the council elevate Mrs R's priority to the highest priority band and pay £1,000 to acknowledge the significant distress, inconvenience and time and trouble she and her family were caused, together with a further £20 per week until they were re-housed.

Mr A asked for a housing transfer on health grounds, after a period of harassment by a neighbour. The council did not inform Mr A of the outcome of its housing needs assessment and did not advise him of his right to request a review of its decision. The council's record keeping of contact with the police about the harassment was poor. But the police did not support Mr A's request for re-housing so the poor record keeping did not affect his housing situation. **We recommended** the council issue Mr A with its housing needs decision in writing, and include the necessary information about how to request a review. We also recommended that the relevant council department review its record keeping practices and ensure its officers are reminded of the importance of adequate record keeping.

r  
**Apology**  
**Remedial action**  
**Acknowledgement**  
**of loss of suitable**  
**accommodation**  
**Acknowledgement of**  
**significant distress**

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d  
**Apology**  
**Review policy/**  
**procedure**  
**Remedial action**

y

## Housing allocations and transfers

Mr and Mrs S were living in a ground floor bedsit and successfully bid on a council property. When they viewed it they found it had no damp proof course. It was also unsuitable for Mrs S's medical needs, as she has a condition which affects her ability to use stairs. But the council misled Mr and Mrs S into believing they had to take the property or they would not get another. When they complained, the council accepted it should not have offered the property at all, and that it had misled them. It offered to remedy this by giving them gold band priority for a further three months. But by this time Mrs S was heavily pregnant and, because of her medical condition, could not cope with moving house; and the gold band priority was only for one bedroom properties, which would be too small for the family as soon as the baby was born. So Mr and Mrs S remained in an overcrowded property unsuitable for Mrs S's medical condition and with damp in the two downstairs rooms. **We recommended** the council place them in gold band, eligible for two bedroom properties, for a further three months. We also recommended the council pay them £750 to acknowledge the three-month-period they had already spent in unsuitable accommodation.

Apology  
Remedial action  
Acknowledgement  
of loss of suitable  
accommodation

Mr P complained that the council's allocation scheme did not give sufficient priority to people whose existing accommodation was unsuitable for them because of a disability. Social housing in the council's area was provided by housing associations and Mr P complained that he had not been nominated for suitable properties and continued to live in unsatisfactory accommodation. He also alleged that the council's scheme did not comply with the law. We concluded that the council's allocation scheme gave undue prominence to secondary criteria rather than essential (statutory) criteria and that Mr and Mrs P, who both had physical disabilities, had to wait for a suitable offer for three months longer than they should have done. **We recommended** the council pay £450 to Mr P to reflect the three months avoidably spent in unsuitable accommodation, and to review its allocation scheme to give suitable weight to the required criteria.

Apology  
Review policy/  
procedure  
Acknowledgement  
of loss of suitable  
accommodation

Mr P has mental health issues and has spent time in prison. When he was recalled to prison from a hostel the council agreed to store his belongings. Later, while on release, he went to the storage firm to collect his belongings to pass them to a friend. He could not do so. There was some dispute about whether Mr P could not collect his belongings because the offices were shut or because the council had not paid all the fees. Mr P returned to prison with his belongings still in storage and the council served seven days' notice that it would destroy them. When Mr P's support worker contacted the council on the seventh day, he found the council had destroyed Mr P's belongings three days earlier. It was not certain whether Mr P could have prevented the destruction of his belongings if the council had waited for the full seven days. And although Mr P said it would cost £10,000 to replace them, the only records of the goods indicated there were three electrical items, and several boxes with unknown contents. **We recommended** the council apologise and pay Mr P £750 to acknowledge that because of its fault, Mr P would never know if he could have prevented the destruction of his belongings.

**Apology  
Acknowledgement of  
significant distress**

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m

Mr C submitted a tender for a contract to carry out work for the council. The council had gone to some lengths in the tender documents to explain what weight would be given to various factors when awarding the contract. But when considering the tenders it introduced other factors which were decisive in the decision making. In particular it gave considerable weight to whether the applicant had undertaken similar work on a similar scale before. The council accepted it had not been clear. We found that if the tender documents had been clear, Mr C would have known he could not meet the requirements and would not have submitted a tender. So because of the council's fault he had wasted time in submitting a bid. Mr C said it had taken him a long time to compile the tender document as it was complex. But the council provided information from other applicants on the time it had taken them to prepare their tenders and we concluded that one day of professional time was a proper reflection of the injustice to Mr C. **We recommended** the council apologise to Mr C and pay him £500 to acknowledge the avoidable time and trouble arising from its fault.

**Apology  
Acknowledgement of  
exceptional time and  
trouble**

o

d

y

Mr Q's company provided services in connection with licensing and other matters for companies in the leisure industry. We found an officer of the council acted inappropriately in his dealings with a particular application and also wrongly besmirched the company's reputation in comments made to other clients of the company. The officer told some of the company's other clients that the council would not deal with Mr Q and went directly to the client even though Mr Q was the client's appointed agent. **We recommended** the council pay Mr Q £250 to acknowledge the impact on his company's reputation with each of the clients it had contacted direct (a total of £1,000).

**Apology**  
**Acknowledgement of moderate distress**

e

Mrs K's house is on a corner, so it faces a side road and a main road. When the council consulted about relocating bus stops in the area, it consulted those living on the main road. But it did not consult Mrs K as her address was the side road. When the council relocated the bus stops, one was positioned next to Mrs K's home and she was affected by noise and anti-social behaviour from passengers using the stop. The council quickly consulted the police and highways authority and identified a new position for the bus stop. **We decided** this was a fair remedy for the complaint.

**Apology**  
**Remedial action**

m

The council interviewed Mrs L under caution after her dog was alleged to have bitten another dog. Mrs L provided corroborating evidence of her version of events. The council did not investigate the incident further before deciding to prosecute her. It then delayed for nearly four months in progressing the prosecution, and withdrew the charge the day before the case was due in court. We found that if the council had investigated the allegation properly, it was unlikely it would have recommended the case for prosecution, and Mrs L had suffered unnecessary stress as a result of the council's fault. **We recommended** the council apologise to Mrs L and pay her £250 to acknowledge the avoidable stress its fault had caused.

**Apology**  
**Acknowledgement of moderate distress**

d

Mr J had mobility difficulties and applied for a Blue Badge for parking. He could walk, but very slowly, to manage his breathing. The council acknowledged this but decided that he did not qualify for the scheme. We found the council's decision was not in line with the Department for Transport's guidance or the information on the council's own assessment form. **We recommended** the council offer Mr J a fresh mobility assessment with a different assessor.

**Apology**  
**Remedial action**

y



Mr and Mrs D own several 'houses in multiple occupation' (HMOs). The council proposed an accreditation scheme for HMOs that would enable a local agency to confirm to its clients that accommodation was suitable. Mr and Mrs D participated in the scheme but they disagreed with the council about the work required to meet fire safety standards. So they left one of their HMOs at what they considered to be the appropriate standard. The matter went to tribunal and the tribunal shared Mr and Mrs D's view. The council did not appeal against this decision but it disagreed with it.

After the tribunal's decision, the council failed for six months to clearly set out its position on the alleged defects in Mr and Mrs D's HMO and the work needed to remedy these defects. So Mr and Mrs D could not arrange the minor remedial work necessary for the property to be accredited. They were also put to considerable time and trouble in corresponding with the council to try to establish what work needed to be done.

**We recommended** the council review the accreditation scheme to remove any ambiguity about the relevant standards and guidance; apologise to Mr and Mrs D; refund the inspection fee for the property, and waive the accreditation fee for the following year; and carry out the minor remedial work necessary for the property to be accredited. We also recommended the council pay Mr and Mrs D £250 to acknowledge the avoidable time and trouble its fault had caused them. We could not conclude Mr and Mrs D had lost income as a result of the fault, because they had still been able to let the property, but they had lost the benefit of the property being accredited under the scheme and let to vetted occupants. So we recommended a further payment of £400 to acknowledge this.

Mrs H's garden was next to land owned by the council. The council wrongly cut back plants growing on her land. Mrs H was distressed when she returned home to find her plants had been damaged. The council accepted it was at fault and apologised. It reviewed its procedures to prevent such a mistake occurring again and it also offered to replant Mrs H's land or make a payment to cover such replanting work. Mrs H's late husband had raised many of the damaged plants so they had sentimental value to her.

**We recommended** the council also pay Mrs H £150 to acknowledge the distress caused to her by its fault.

**Apology**  
**Review of policy/  
 procedure**  
**Quantifiable financial  
 loss**  
**Acknowledgement of  
 moderate distress**  
**Acknowledgement of  
 moderate time and  
 trouble**

m

e

**Apology**  
**Acknowledgement of  
 moderate distress**

y

Ms C says the council failed to tell her of a planning application for an extended balcony and roof terrace next to a house she owns and did not properly consider the development's effect on her property's privacy. The council accepted it was at fault for not sending a letter. It apologised to Ms C and paid her £100 to acknowledge her lost opportunity to comment. But a balcony by its nature encourages people to sit out on it and they do so looking towards Ms C's garden. So if Ms C had objected to the potential overlooking, it is probable the council would have considered this point more before deciding the application, and would more likely than not have asked the applicants to give some thought to screening. **We recommended** the council should obtain and plant on Ms C's property a semi-mature tree that would provide some screening. The council's involvement would save Ms C the inconvenience of investigating suitable species and obtaining and planting the tree.

**Apology  
Remedial action**

Mr and Mrs W wanted to close their pub because of falling trade and incorporate the bar into their private accommodation. They explained their ideas to a planning officer on three occasions but were never told of the council's policy on the conversion of public houses to residential use. This said that permission would only be granted if there was evidence that the premises had been realistically marketed as a pub and the business was not economically viable. They applied for planning permission which, without the marketing evidence, was never likely to be granted. There was strong local feeling about the pub closure and Mr and Mrs W were subject to a great deal of personal animosity causing them considerable distress. The council's failure to tell Mr and Mrs W of the policy before their application for planning permission meant they suffered distress and anxiety for longer than would have been the case if they had been properly informed. **We recommended** the council pay them £1,000 to acknowledge the increased duration of their distress and anxiety.

**Apology  
Acknowledgement of  
prolonged distress**

A housing association was granted planning permission by a council to demolish derelict flats on land adjoining Mr A's property and to build 20 new low-rise flats. The council should have notified Mr A about the application but did not. The planning committee visited the site before making a decision, but at that time Mr A's property was shielded by a line of established trees on his land. Before any work was started on the site next door, Mr A cut down his trees because of the fire risk from vandalism at the derelict flats. When built, one of the new flats overlooked Mr A's living room and main bedroom, affecting his right to privacy. We could not say whether the decision would have been different if Mr A had been able to object, or his trees had been cut down before the planning committee's site visit. But if he had been notified about the application, Mr A would not have cut down his trees. **We recommended** the council planted a row of established trees on Mr A's property to form an effective screen.

**Apology**  
**Remedial action**

Mr R complained that the council told his neighbours that they did not need planning permission for their conservatory which overlooked his property. The council accepted that it was in error and that permission was needed but said, if an application had been made, permission would have been granted with a condition requiring obscure glazing to protect Mr R's amenity. **We recommended** the council regularise the planning situation and discuss remedial work with the neighbours. The neighbours agreed to insert obscure glazing in the windows which overlooked Mr R's; this was paid for by the council. The council also paid Mr R £250 to acknowledge the avoidable distress caused by its error.

**Apology**  
**Remedial action**  
**Acknowledgement of moderate distress**

The council was at fault for failing to get the required agreement from a developer for an access road to a new housing development during the planning application process. Buyers of the new properties therefore did not have adequate access to the public highway and faced costs in rectifying this. **We recommended** the council pay two thirds of the cost of rectifying the access road problems. We did not recommend the full cost because the problems with the access road could have been identified (and perhaps resolved) during the buying process, and buyers of the new properties might have had to pay more for their properties to cover the cost of the relevant approvals had the developer properly obtained them.

**Apology**  
**Quantifiable financial loss**

Mr D complained that, when granting planning permission for a large barn-like building next to his boundary, the council failed to take into account the likely effect on his listed house and historic garden, from both of which the new building was clearly and intrusively visible. The council failed to consult Mr D on his neighbour's application. The council accepted that the presence of the listed building and historic garden and the effect of the development on them was a material planning consideration which had not been taken into account when determining the application. There was insufficient land remaining between the new building and the historic garden to plant an effective tree screen to hide the barn. It was more likely than not that the barn would not have been permitted in its present position if its effect on Mr D's house and garden had been taken into account. **We recommended** the council pay Mr D the difference between the value of his property before and after the barn was built.

**Apology**  
**Remedial action**  
**Acknowledgement of moderate distress**

e

Mr M complained that the council did not take account of the potential effect on his property when it gave planning approval for seven houses to be built on an adjacent site. There was a well known history of flooding around the site and parts of his land became flooded after the development was complete. Following consultation with the Environment Agency, the council had required the new houses to be built to a minimum floor level so they would not flood. This involved raising the site level by the addition of one metre of soil. But the council and the Environment Agency did not communicate effectively and we saw no evidence that either had given any thought to the increased flood risk to the neighbouring land. We concluded that there was fault by both the council and the Environment Agency. **We recommended** the two parties jointly fund a full flood risk assessment to see if Mr M's property was now more vulnerable to flooding than before the development and, if so, pay for works to alleviate that additional risk. The council also paid Mr M £500 and the Environment Agency paid £250 to acknowledge the anxiety their faults had caused.

**Apology**  
**Remedial action**  
**Acknowledgement of moderate distress**

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Mr J asked the council whether he needed planning permission to replace a camper van with a caravan to store goods in and sleep in during the lambing season. The council wrote to Mr J saying he did not need planning permission because the proposed use related to agriculture. But two and a half years later the council said that the caravan was unauthorised development, because it was in position all year round, not just during the lambing season. The council served an enforcement notice on Mr J. He did not appeal or remove the caravan and the council prosecuted him. The council agreed its advice to Mr J had been incomplete and that this had caused Mr J inconvenience. Mr J could recover some, but not all, of the cost of the caravan when he sold it. **We recommended** the council pay Mr J £1,000 to acknowledge the inconvenience its wrong advice caused him. But we did not recommend that Mr J was allowed to store the caravan on site all year as this was a matter for the Planning Inspectorate to decide.

**Apology**  
**Acknowledgement of significant distress**

Ms B complained that the council changed a planning condition after her neighbour submitted a re-application, resulting in unacceptable overlooking of her bedroom. The council had originally recommended a condition preventing a window being opened in a way that would allow a view into Ms B's bedroom. When the neighbour made a revised application, to meet building control requirements, the council changed the planning condition for the window, even though the relationship between the properties had not changed. The council accepted this was wrong and negotiated with the neighbour to fit a window restrictor. **We decided** this was a satisfactory remedy, because it met the intention of the original condition and protected Ms B's privacy. The house had been empty since completion so Ms B had not suffered harm as a result of the changed planning condition.

**Apology**  
**Remedial action**

Mrs N lives next to a community centre. The council granted planning permission for the centre to extend its car park. But it did so without taking proper account of the objections to the proposal it had received. The council accepted its fault and offered to build a new fence on Mrs N's land between her garden and the car park. But because her garden is already small, Mrs N wanted the existing fence to be replaced instead. The council negotiated with the community centre, which agreed to have the replacement fence on its property. The council also undertook to review the soft landscaping scheme for the development, and review whether there were any legal limits on how many cars could be parked in the car park. **We decided** these actions amounted to a satisfactory remedy for the complaint.

**Apology**  
**Remedial action**

Ms K lives in a flat and the council granted planning permission for her upstairs neighbour to build an external staircase. The council accepted it had done this without taking proper account of Ms K's amenity. So the external staircase was not fully screened, and users could see directly into Ms K's unfrosted bathroom window and her rear patio doors. The council offered to pay for obscure glazing in Ms K's bathroom window. It also offered to discuss with her neighbour the possibility of attaching more obscure glazing to the external staircase. But its attempts to do this were not successful. The council accepted it had taken too long and decided to pursue a discontinuance order. It also agreed to pay Ms K's planning consultant fees. But these actions did not remedy the avoidable distress arising to Ms K from the months of uncertainty about what the outcome would be. **We recommended** the council pay Ms K £500 to acknowledge this impact on her.

**Apology**  
**Remedial action**  
**Quantifiable financial loss**  
**Acknowledgement of prolonged distress**

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## **Local Government Ombudsman**

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