



The Commission for  
Local Administration in England

# Remedies

Guidance on good practice **6**

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The Commission is committed to providing equal opportunities in employment and in the services it provides. The Commission seeks to ensure that no complainant, job applicant or Commission employee is treated any differently from another because of their: colour; race; nationality; ethnic, regional or national origin; age; marital status; disability; political or religious belief; sex; trade union activity; sexuality or class.

# Introduction

This guidance note sets out the guidelines we use when considering remedies for justified complaints.

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

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

We apply these guidelines both in our formal reports and in considering proposals for 'local settlements'. There were nearly 2,500 local settlements last year. They occur where, during the course of our consideration of a complaint, the authority concerned takes action which settles the complaint to our satisfaction.

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

The note begins by setting out the general framework. This is then illustrated by two sections relating to specific areas of complaint. And, finally, there is a section about the way we consider whether to recommend a remedy for complainants' time and trouble.

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

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*September 1997*

# A General framework

## Purpose

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

## Applicability

- 3 The guidelines apply to local settlements as well as remedies included in formal reports. Local settlements occur where, during the course of the consideration of a complaint, the authority concerned takes action which settles the complaint to the satisfaction of the Ombudsman.

## Maladministration and injustice

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

## General principle of remedies

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

## Views of complainants

- 8 In the course of investigations, the views of complainants about remedies should be obtained if their views are not already apparent from what they said when first making the complaint. The Ombudsmen will always take account of complainants' views but they must arrive at their own decisions about what would be a satisfactory remedy.

## Elements in a remedy

9 There are a number of elements which, depending on the circumstances, could be considered for inclusion in the recommendation to a council by way of a remedy for injustice caused by maladministration. These elements are referred to in paragraphs 10–44 below. In some cases one of these elements will be all that is required. In others a combination of elements will be appropriate.

## Specific action

10 Consideration should always be given to whether there is some practical action which would provide all or part of a suitable remedy. This may be appropriate, in particular, when the injustice stems from failure to take some specific action. So, for example, recommendations might be:

- to issue a final statement of special educational needs where that has not yet been done;
- to take action to make the provision specified in a statement of special educational needs;
- to effect the necessary repairs to a complainant's council house;
- to offer a tenant a transfer of accommodation; or
- to assess entitlement to a benefit (for example, housing benefit) and make any requisite payment.

11 In other cases it may be appropriate to recommend some practical action which would ameliorate the injustice. Examples might be:

- the provision of screening to mitigate the effect of a development near to the complainant's property; or
- the provision of specialist equipment or additional tuition for a child whose education had been adversely affected.

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

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

## Financial compensation

14 Financial compensation may be appropriate, for example if the council has taken the appropriate action but has delayed in doing so and the delay has caused injustice; or if there is no practical action which would provide a full and appropriate remedy; or if the complainant has sustained loss or suffering. Compensation needs to take account of all the particular facts of the case. In deciding what would be appropriate, the elements set out in paragraphs 15–41 below should be considered.

## The effect of the complainant's own action

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

- where there was delay in dealing with the matter which was partly the fault of the council and partly the fault of the complainant;
- where the complainant has not taken action to mitigate the effect of the maladministration and could reasonably have been expected to take such action; or
- where the complainant did not take advantage of an available benefit (for example, parents not accepting the council's offer of four hours a week special tuition for a child because they wanted eight hours).

## Money not paid to the complainant

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

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

17 In some cases, interest on the payment may be justified – see paragraphs 40–41 below.

## Quantifiable loss

- 18 The complainant may, quite reasonably, have incurred costs which would not have been necessary but for the maladministration. In that case reimbursement (in whole or in part) may be appropriate. Examples may include:
- paying for the additional help the parents procured for a child with special educational needs because the council delayed in drawing up a statement or fulfilling its provisions;
  - expenditure by the complainant in decorating after repairs because the council neglected to do work it should have done;
  - professional fees for a psychologist to undertake a private assessment of a child; or
  - abortive expenditure, for example fees in respect of a land purchase which the council agreed but then cancelled.
- 19 In all such cases, what has to be decided is whether the Ombudsman thinks it was reasonable for the complainant to incur these costs, and whether they were consequent on the maladministration.
- 20 Normally compensation in these cases will relate to reasonable actual expense incurred.

## Loss of a non-monetary benefit

- 21 The injustice may be that the complainant (or the person on whose behalf the complaint was made, or some other person affected, for example a child of the complainant) has for a period been deprived of a non-monetary benefit which he or she would have received if there had been no maladministration. For example:
- loss of education because a child is out of school for a period and no suitable alternative provision has been made; or
  - a council tenant has been unable to use one of the rooms in his or her flat for a period because of lack of repair.
- 22 Quantification of loss of such benefits may not be easy. However, in some circumstances (but certainly not all cases), there may be an objective measurement available and regard may be had to that as an indication of the lost benefit. For example, one approach may be to ask – what would it have cost the council to make the appropriate provision for the relevant period? (This could be relevant to the first example above.)

- 23 It has to be borne in mind, however, that the cost to the council of what should have been done is only one factor to be taken into account and not a formula to be automatically applied. There may be times when the lack of provision saved the council only a very small amount of money but has caused major injustice which would not be redressed by a payment based on the cost to the council. The converse might also apply when the cost of the provision greatly exceeds the injustice. The effect on the complainant (or other relevant person) has to be considered.
- 24 In other cases it may be possible to assess what value the council put on the facility – so in the second example regard may be had, if it is appropriate, to a proportion of the assessed rent for the property which could be related to the loss of the use of one room.
- 25 Where there is no objective assessment of such a kind available, a reasonable broad assessment needs to be made.

### Loss of value

- 26 Where something owned by the complainant has lost value, an objective assessment of the loss may be possible, assessed where appropriate by an independent valuer.
- 27 This can sometimes be relevant in planning cases where, as a result of maladministration, there is devaluation of property and any reasonable action which the council could take to restore amenity would not fully compensate for the injustice. Here the comparison to make would be between the value after the event and the probable value without the maladministration. It can also be relevant where there is damage to possessions. Where items of relatively low value are involved it would not normally be appropriate to seek an independent valuation. In such cases a reasonable judgement should be made taking account of the comments of the complainant and the council.

### Lost opportunity

- 28 Sometimes the injustice may be that the complainant was deprived of an opportunity. For example, the complainant may have been deprived of a right of appeal because the council did not inform him or her of that right.
- 29 Compensation for a lost opportunity may sometimes be a fairly small sum, because it is only the loss of the opportunity which is certain and the actual outcome which would have obtained



cannot be known. In other cases it may be reasonably certain what the outcome would have been and that it would have been beneficial to the complainant, and compensation could then have regard to the effect of that outcome. Conversely, if it is reasonably certain that the outcome would not have been of benefit to the complainant, then no injustice resulted and it would not be appropriate to recommend financial compensation in this case.

## Distress

- 30 Compensation may be considered for what might generally be characterised as 'distress' (including stress, anxiety, frustration, uncertainty, worry, inconvenience, etc). This needs to have regard to all the circumstances including the severity of the distress, the length of time involved, and the number of people affected (for example, members of the complainant's family as well as the complainant).
- 31 This element may be a moderate sum of no more than a few hundred pounds or less but in cases where the distress has been severe and/or prolonged, a more substantial sum may be justified.

## Professional fees in pursuing dispute

- 32 It may sometimes be appropriate to recognise that the nature of the complainant's difficulty with the council was such that expenditure on professional fees in pursuing the dispute was justified; for example, legal fees or fees for a planning consultant.
- 33 In all such cases, what has to be decided is whether the Ombudsman thinks it was reasonable for the complainant to incur these costs in the circumstances of the case, and whether they were consequent on the maladministration.
- 34 Where appropriate, the recommendation may be for a contribution to costs rather than reimbursement of the whole of the expenditure. (For example, because it was reasonable to engage a solicitor not at the outset but at a later stage or because the amount of professional advice commissioned was disproportionate.)
- 35 Complainants usually do not need a solicitor or other professional adviser to help them make a complaint to the Ombudsman. So the Ombudsman is unlikely to recommend that fees for this purpose should be reimbursed unless there are exceptional circumstances.

## Time and trouble

36 Consideration should be given to the question of whether a payment for time and trouble in pursuing the complaint with the council and the Ombudsman should be included. See section D.

37 Care has to be taken not to confuse the question of time and trouble in pursuing the complaint on the one hand and the element of distress (paragraphs 30–31 above) on the other.

## Offsetting compensation

38 In circumstances where the complainant owes money to the council (for example, for rent arrears), it would usually be appropriate for the compensation to be offset against the debt. Indeed, it may sometimes be helpful for the report to include a comment to that effect.

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

## Interest

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

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

41 Interest should be calculated at a standard rate which will be the rate used by the County Court and should be applied until the date when payment is made.

## Formula

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

## Apology

43 It might be expected that as a matter of course councils would make an apology where appropriate and it will not normally be necessary to recommend this as part of the remedy.

44 In some circumstances an apology is in itself all that is required by way of a remedy.

## The authority's practices

45 Where appropriate, and arising from information included in the factual part of the report, the recommendation may include advice to review the authority's practices, procedures or policy, or to give consideration to particular suggestions for improvements specified in the report.

46 Where it is known that the council has already undertaken a review or will conduct one, that fact should be mentioned in the conclusion to the report together with any comment which the Ombudsman may wish to add (for example, to express appreciation, or to request a later report from the council on the completion of the review or how new arrangements are being implemented).

## B Further illustrations: council housing repairs

### Introduction

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

### Elements in a remedy

- 2 Consideration should be given to all the potential elements in a remedy as defined in section A.

### Specific action

- 3 There will often be a situation where the problem is still continuing at the time of the report and it would be right for the Ombudsman to recommend that the council should take some specific action to deal with it.
- 4 Where council housing repairs are concerned it is possible that the complainant will still be waiting for one or more of the following:
  - assessment to determine the cause of a problem, (for example damp, leaking roof), so that effective remedial action can be taken;
  - repairs to be carried out;
  - works or repairs to be completed;
  - previous defective work to be brought up to a satisfactory standard;
  - damage to be put right which was caused by council workers or contractors carrying out repairs; or
  - assessment of an insurance claim for damaged possessions.
- 5 Depending upon the particular circumstances of the case the Ombudsman may recommend that the complainant be given priority. In complaint 92/A/1076 major works and repairs were still outstanding after two-and-a-half years. Apart from recommending significant financial compensation the Ombudsman also recommended that:
  - an urgent inspection of the complainant's house be arranged to identify all outstanding repairs which should be completed within three months;
  - the complainant's request for central heating should be discussed with him and, if his present circumstances warranted it, his home should be included in the capital programme; and
  - arrangements should be made for the exterior of the complainant's house to be painted in the next available external decoration programme.

- 6 In some cases it may be appropriate to recommend priority for transfer to another property. In complaint 91/A/4135 the only offer made to the complainant was of a maisonette which she later discovered to be in a dangerous condition as well as being damp and having no form of heating. The Ombudsman recommended that the council should rehouse her in a suitable property in an area of her choice and that her application should be accorded management transfer status and be backdated to the date her tenancy of the maisonette began.

## Financial compensation

- 7 This is likely to be relevant and the elements set out in paragraphs 8–24 below need to be considered.

### The effect of the complainant's own actions

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

### Money not paid to the complainant

- 9 This may be relevant in council housing repair cases because many councils allow tenants themselves to redecorate, or arrange for redecoration, after council workers or contractors have carried out repairs. A redecoration allowance is often payable in these circumstances. In the report on complaint 92/A/2012 the Ombudsman recommended that the council should consider paying the complainant's claim for the labour element of a redecoration allowance even though the claim would normally be out of time. This was because the complainant had been obliged to redecorate three rooms following structural repairs and replastering by council workers. Although he had received vouchers from the council to pay for decorating materials he had not been paid the labour allowance to which he was entitled in the circumstances.

### Quantifiable loss

- 10 In council housing repair cases, where there has been maladministration, some of the common types of consequent quantifiable loss are:
  - damage to complainant's belongings resulting from the activities of council workers or contractors;

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

11 In the report on complaint 93/A/132 the Ombudsman agreed that the council's payment of £300 for damage caused to the complainant's belongings by its contractors, and of £912 towards his additional living expenses whilst work was being carried out in his flat, did provide a reasonable remedy in this particular case.

12 In the report on complaint 93/A/3328 the Ombudsman recommended that the council should appoint an independent loss adjuster to determine whether the complainant had suffered a material loss through having to discard carpets, curtains and clothes ruined by his excessively damp living conditions which the council had failed to remedy for a number of years.

## Loss of benefit

13 In council housing repair cases there is a contractual relationship via the tenancy agreement between council and tenant. Broadly speaking the tenant undertakes to pay rent, and the council to maintain and repair the property as may become necessary. If the council persistently fails to honour its obligations, or takes an unreasonably long period of time, then the tenant may be deprived of the full use and enjoyment of his or her home. That injustice may in many cases be increased by the distress of living in those conditions, as well as the loss of the benefit of the home. It may sometimes be appropriate to cover both aspects by referring, for example, to 'the inconvenience and distress of living in unsatisfactory conditions'. Although it may not be easy to distinguish loss from distress, each element should, as far as possible, be considered separately in formulating the recommended remedy.

- 14 The number of rooms that the tenant is able to use may be restricted, or in extreme cases, he or she might have to vacate the property altogether. Where the tenant has endured this situation for a prolonged period, some element of rent rebate may be appropriate. In the report on complaint 91/A/2965 the Ombudsman recommended that the council refund the complainant's rent for the period April to July 1991 because it had given him the tenancy of a flat which was not fit to let and in which he and his wife were consequently unable to live.
- 15 Depending upon the nature of the disrepair, the health of the complainant and his or her family may be affected by the council's maladministration.
- 16 Similar criteria will apply in council housing repair cases as are used in assessing compensation in other housing cases; that is, while the level of inconvenience, frustration and distress varies, it can often be very severe and may persist over a long period of time. The loss of benefits and level of distress need to be carefully assessed in the light of all the circumstances of the individual case. Because these vary significantly, the guideline has to be broad, but generally it is likely that the appropriate sum would be in the range of £200 to £1,000 for a year, with broadly *pro rata* sums for shorter or longer periods. But a careful assessment of the facts may, on some occasions, point to sums above or below that range.
- 17 The calculation of compensation in council housing repair cases needs to take into consideration factors such as:
- the length of time for which the repairs or other works had been outstanding before the council took any action;
  - the length of time taken by the council actually to carry out the repairs or other works to an acceptable standard;
  - the number of people in the complainant's household who have been affected by the council's maladministration;
  - their degree of vulnerability; for example, the household may contain elderly or disabled people or children;
  - the nature and extent of the disrepair or living conditions with which the complainant and his or her household have had to live;
  - whether whole rooms were unusable for any period of time;
  - the effect of the disrepair or poor living conditions upon the health of the complainant and members of his or her household; or
  - whether the disrepair created a safety hazard.

18 It has to be borne in mind that it is possible for severe distress to be caused over quite a long period of time without the council necessarily having acted with maladministration. For example, resource constraints may preclude the council from carrying out major work to housing stock on a one-off basis. This may have to wait to be carried out as part of a long term programme of improvements. However great the distress to the complainant, the test can only be whether the council dealt with the problem in a fair and proper way.

Loss of value 19 This is unlikely to be relevant.

Lost opportunity 20 This is unlikely to be relevant.

Distress 21 This has already been referred to in paragraphs 13–18 above.

Professional fees in pursuing dispute 22 Although there may not be many cases where this is relevant, consideration may need to be given to whether it was reasonable for the complainant to engage, for example, independent environmental health consultants, surveyors or lawyers.

Time and trouble 23 Consideration should be given to the question of whether a payment for time and trouble in pursuing the complaint with the council and the Ombudsman should be included. See section D.

24 In council housing repair cases it is likely that complainants will have been put to a great deal of trouble and possibly expense in having persistently to contact the council to ask for repairs to be done, to arrange for council staff to visit their homes and to arrange to take time off from work for this purpose and so on. In these circumstances there can be nothing more aggravating than appointments not being kept. Furthermore, in cases where there has been a long period of delay in carrying out major works the compensation element may be significant. It will often be appropriate, therefore, to specify separately the compensation and time and trouble elements of the remedy in order to emphasise that the complainant has not only had considerable distress and loss of benefit but also been put to time and trouble.



## C Further illustrations: neighbour nuisance

### Introduction

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

### Elements in a remedy

- 2 Consideration should be given to all of the potential elements in a remedy as defined in section A.

### Specific action

- 3 There will often be a situation where the problem is still continuing at the time of the report and it would be right for the Ombudsman to recommend that the council should take some specific action to deal with it.
- 4 This is particularly likely to be relevant when the complainant and/or the neighbour is a council tenant because the council as a landlord has more options open to it than it has in the cases of private tenants or owner/occupiers. One example would be a tenancy transfer, as in the report on complaint 93/A/4274 where the Ombudsman recommended an immediate management transfer for a council tenant, himself prone to depression, living directly beneath a mentally ill and abusive woman who would not accept a transfer herself in accordance with the council's usual policy and whom it would not evict because of her vulnerable status.
- 5 Other actions which might be recommended for consideration, in relevant circumstances, are the issue of an abatement notice in respect of a statutory nuisance, and seeking an injunction.

### Financial compensation

- 6 This is likely to be relevant and the elements set out in paragraphs 7–22 below need to be considered.

### The effect of the complainant's own actions

- 7 It is reasonable, and indeed necessary, for the council to seek to establish the extent and frequency of the alleged neighbour nuisance before taking action. However, the complainants may not have completed the diary sheets supplied to them by the council, thus hindering the resolution of their complaint and prolonging their own ordeal.
- 8 Alternatively, there may have been an element of reciprocity contained within the neighbour nuisance problem which made it more difficult for the council to resolve quickly.

## Money not paid to the complainant

9 This is unlikely to be relevant.

## Quantifiable loss

10 Sufferers from neighbour nuisance are sometimes driven to vacate their own homes and stay with family or friends until the problem is resolved. Where the council delays unjustifiably in taking action in a case of neighbour nuisance it may be appropriate for the Ombudsman to recommend reimbursement of additional living expenses incurred by the complainant in escaping the nuisance.

## Loss of benefit

11 Where the complainant is a council tenant, who has been deprived of the enjoyment of his or her home, some element of rent rebate may be appropriate. In the report on complaint 93/A/611 the Ombudsman recommended that the council should not charge the complainant rent from the date of the Ombudsman's report until such time as the council's action against the perpetrator was processed by the courts.

## Loss of value

12 This is unlikely to be relevant.

## Lost opportunity

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

## Distress

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

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

- the length of time for which the neighbour nuisance persisted before the council took effective action;
- the severity of the neighbour nuisance;
- the frequency of occurrence;
- the number of people affected in the property in addition to the complainant;

- the vulnerability of the complainant, or any other people affected, (for instance, they may be elderly, disabled or children); and
- the extent of the council's maladministration.

16 While the degree of distress in neighbour nuisance cases does vary, it can often be very severe, and may sometimes persist over a long period. Substantial compensation may sometimes be appropriate therefore, as in the following examples. In complaint 91/B/2696, the complainant and his family, which included two children, had suffered persistent racial harassment for 11 years and this was reflected in the Ombudsman's recommendation of £10,000 compensation. In complaint 93/A/611 (previously quoted in paragraph 11 above), the complainant suffered six years of nuisance and harassment, including physical assault, from a mentally ill neighbour. In addition to recommending that the council should waive the complainant's rent from the date of the report until the situation was resolved, the Ombudsman also recommended the payment of £4,000 for the distress caused.

17 The level of compensation for distress needs to be carefully assessed in the light of all the circumstances of the individual case. Because these do vary significantly, the guideline has to be broad, but generally it is likely that the appropriate sum would be in the range of £200 to £1,000 for a year, with broadly *pro rata* sums for shorter or longer periods. But a careful assessment of the facts may, on some occasions, point to sums above or below that range.

18 It needs to be borne in mind that it is possible that severe distress may be caused over quite a long period of time without the council necessarily having acted with maladministration. Indeed, it may have conflicting duties which it cannot quickly or easily resolve. For instance, this may be so in the case of mentally ill tenants whom the council has a duty to house because they are vulnerable.

19 In such cases courts may be reluctant to grant eviction orders. The perpetrator of the nuisance may not be willing to move voluntarily and even if he or she is, or if the victim of the nuisance is willing to be moved, the council may not immediately be able to provide suitable alternative accommodation. However great the distress caused to the complainant, the test can only be whether the council dealt with the problem fairly and properly.

## Professional fees in pursuing dispute

20 A cost incurred by the complainant which may need to be considered is legal fees. In complaint 91/B/2696, where the complainant and his family suffered racial harassment for 11 years without the council taking their complaints seriously, the Ombudsman recommended the reimbursement of all reasonable legal fees incurred by the complainant in pursuing his complaint with the council.

## Time and trouble

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

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

## D Time and trouble payments

### Guidelines for a 'time and trouble' element in remedies

- 1 In the preparation of the conclusion for a formal report finding maladministration and injustice, consideration of the remedy should always include consideration of whether an element of compensation should be included in respect of the complainant's time and trouble in making the complaint.
- 2 A time and trouble payment, where appropriate, should be some compensation for time and trouble reasonably and legitimately expended by the complainant in having to pursue the complaint with the council and with the Ombudsman, and minor items of expenditure and financial loss which are not otherwise taken into account in the compensation recommended.
- 3 Anyone pursuing a complaint can normally be expected to incur a certain amount of time and trouble and minor costs. A time and trouble payment will not therefore be appropriate in every case. It should be made only where it can be justified on the basis that the facts of the case show that time and trouble and minor costs for the complainant were more than would routinely be required for pursuing a complaint.
- 4 Time and trouble payments would normally fall within the range of £25 to £250, and the amount should be determined in the light of the facts of the case. In exceptional cases a higher amount could be recommended.
- 5 In the assessment of the time and trouble payment, consideration should be given to all relevant factors in the case which could include, for example (though this is not an exhaustive list):
  - the passage of time, including response times by the council in relation to the nature of the problem;
  - the amount of time and effort which the complainant had to devote;
  - difficulty experienced by the complainant in dealing with the council;
  - the degree of inadequacy in the response of the council to letters, phone calls and visits;
  - whether the inadequate response of the council resulted to any extent from wilful action, as opposed to poor administration;

- the level of minor or generally unquantified expenses incurred by the complainant (such as significant post or telephone costs, travel costs, loss of earnings) – that is, other than significant quantified expenses (for example, legal or other professional fees) which are identified as separate elements of compensation; and
  - if the complainant is acting on behalf of others (for example, a secretary of a tenants' association or one complainant pursuing a complaint on behalf of a group of complainants).
- 6 Care should be taken to distinguish on the one hand the factors which affect the time and trouble payment and on the other hand the elements of injustice broadly characterized as 'distress' (including stress, anxiety, frustration, uncertainty, worry, inconvenience etc). These are different concepts and should not be confused.
  - 7 A time and trouble payment may be specified separately or the compensation may be included in a composite sum, which includes time and trouble without a figure for that element being separately defined. Where such a composite sum is involved, it should be made clear that time and trouble has been taken into account.
  - 8 Points 1–7 above refer to arrangements for a recommendation in a formal report finding maladministration and injustice, but consideration may also be given to a time and trouble payment as part of a local settlement. Generally, time and trouble payments are less likely to be recommended for a local settlement but should be considered where there is sufficient justification.
  - 9 The amount of time and trouble payment, as part of a local settlement, is generally likely to be lower than such payments included in recommendations of a formal report finding maladministration and injustice.

the 1990s, the number of people in the UK who are employed in the public sector has increased from 10.5 million to 12.5 million, and the number of people in the public sector who are employed in health care has increased from 2.5 million to 3.5 million (Department of Health 2000).

There are a number of reasons for this increase. One of the main reasons is the increasing demand for health care services. The population of the UK is ageing, and there is a growing number of people with chronic conditions such as heart disease, diabetes, and cancer. This has led to an increase in the number of people who need to be treated in hospitals and other health care settings.

Another reason for the increase is the expansion of the public sector. The government has invested heavily in health care services, and this has led to an increase in the number of people who are employed in the public sector. This includes not only those who are employed in health care services, but also those who are employed in other public sector organisations such as the NHS, local authorities, and the police.

There are a number of challenges that the public sector faces in the future. One of the main challenges is the increasing demand for health care services. The population of the UK is ageing, and there is a growing number of people with chronic conditions such as heart disease, diabetes, and cancer. This has led to an increase in the number of people who need to be treated in hospitals and other health care settings.

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There are a number of ways in which the public sector can meet these challenges. One of the main ways is to invest in health care services. This includes investing in hospitals, clinics, and other health care facilities. It also includes investing in the training and development of health care professionals.

Another way is to expand the public sector. The government can invest in other public sector organisations such as the NHS, local authorities, and the police. This can help to create more jobs and to improve the quality of public services.

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