

Maidstone Borough Council Policy on Remedies for Justified Complaints

The Council provides a wide range of services and, in providing them, deals with a large number of customers. We recognise that, from time to time, things will go wrong or that services will not be delivered to the standard that we would like to expect. Section 92 of the Local Government Act 2000 gives councils powers to remedy injustice arising from maladministration. This policy sets out how the power will be administered.

Where a complaint is justified, an apology will normally be appropriate but the Council recognises that, where a complainant has suffered loss or injustice, other remedial action may also need to be considered including (as a last resort) financial compensation.

General Principles

- The purpose of this policy is to ensure that the complainant is put back into the position he or she would have been in but for the fault;
- The Council only sets out to provide remedies or compensation where the complainant has suffered injustice as a result of maladministration;
- The Council aims, as far as possible, to put the complainant in the position he or she would have been in but for the maladministration. Financial compensation will only be paid as a last resort;
- The remedy needs to be appropriate and proportionate to the complaint and any injustice that may have occurred;
- Each case will be considered on its own merits in the light of the particular circumstances; and
- Efforts will be made to ensure that, as far as possible, broadly similar complaints, if justified, should receive broadly comparable remedies.

Remedies

It should be expected that, as a matter of course, any justified complaint should merit an apology from the Council. In some circumstances, this may be all that is required by way of a remedy; however, the Council has a range of alternative remedies that can and should be used:

- Some complaints may be remedied by providing the service desired by the complainant in the first place, such as re-assessing entitlement to housing benefit, collecting a missed bin or providing a particular piece of information;
- In other cases it may be appropriate to consider some practical action which would mitigate the injustice, for example, providing screening to mitigate the effect of a development near to the complainant's property; or
- Where a delay has caused injustice it may be appropriate to provide payment in kind (such as a free swim or theatre ticket) or, in certain cases, financial compensation. Procedures for financial compensation are set out below.

In all cases, 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. It may also be

appropriate for the Council to consider a change of procedures to prevent future difficulties of a similar kind either for the individual complainant or for customers generally.

Financial Compensation/Payments in Kind

Where a complainant has sustained loss or suffering, the Council may consider providing a free service (such as a free swim or theatre ticket) or financial compensation. Examples might include:

- Where the authority has taken an unreasonable time to respond to the complaint or take the appropriate action;
- Where there is no practical action which would provide a full and appropriate remedy; or
- Where the complainant has sustained financial loss.

If the Head of Service feels that it is appropriate and the Monitoring Officer feels that injustice has been caused as a result of maladministration, that a report be taken to Corporate Management Team to consider whether an ex-gratia payment is appropriate. The Council has determined that authority to pay compensation (up to a maximum of £500) should be delegated to the Chief Executive in consultation with Corporate Management Team. The provision of free services is delegated to Section Managers.

Compensation needs to take account of all the particular facts of the case. It will also be necessary to determine:

- Who can take remedial action;
- To what extent action can be taken under delegated powers;
- That arrangements are in place to ensure that the remedy is carried out;
- Whether the Council is acting within its legal powers; and
- Whether the proposed remedy is reasonably consistent with similar cases.

Any payments made will be ex-gratia and would not represent an admission of liability.

TIME AND TROUBLE PAYMENTS

The Council may, from time to time, consider whether an element of compensation should be included in respect of the time a complainant takes, and the trouble he or she incurs, in making the complaint. In all such cases, the Council will have to decide whether it was reasonable for the complainant to incur these costs in the circumstances of the case, and whether they resulted from the maladministration. Consideration of time and trouble may often not be needed if a complaint is settled quickly.

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. Facts which would merit attention include:

- The passage of time, including response times by the authority in relation to the nature of the problem;
- The amount of time and effort which the complainant had to devote;

- The difficulty experienced by the complainant in dealing with the authority;
- The degree of inadequacy in the response of the authority to letters, phone calls and visits;
- Whether the inadequate response of the authority resulted to any extent from wilful action, as opposed to poor administration; or
- The level of minor or generally unquantified expenses incurred by the complainant (such as significant post or telephone costs, travel costs) as distinct from significant quantified expenses (such as legal or other professional fees).

INCONVENIENCE

Compensation will also be considered for what might generally be characterised as 'inconvenience'. As with other elements of this policy, in determining whether to make a compensation payment for inconvenience, the Council will have regard to all the circumstances of the case including:

- The severity of the inconvenience;
- The length of time involved; and
- The number of people affected (for example, members of the complainant's family as well as the complainant).

Exclusions/Considerations

A key principle of the Council's policy on remedies and compensation is that any payments made will be ex-gratia and would not represent an admission of liability. It is also important to note that compensation will not be paid where disadvantage has been caused entirely by a third party or by the actions of the complainant. 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.

Where compensation is considered to be appropriate, the level of compensation paid will take into account the complainant's own action, including:

- Whether the delay in dealing with the matter was 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 do so;
- Where the complainant did not take advantage of an available benefit; or
- Where the actions of the complainant were unreasonable, for example, by pursuing a complaint in unnecessary and excessive detail.

In considering compensation for costs, it should be noted that complainants do not usually need a solicitor or other professional adviser to help them make a complaint. The Council is unlikely to recommend that fees incurred in such instances should be reimbursed unless there are exceptional circumstances such as:

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

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

maladministration. Compensation in these cases will relate to reasonable actual expense incurred.

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.)

A complaint about Council services must be made within 12 months of the service being provided (or failing to be provided).

Reporting

Reports will be made to each meeting of the Standards Committee which will include details of any local settlements, an assessment of the Council's performance in handling complaints and an analysis of complaints received. An annual report will also be made to full Council setting out details of any financial compensation that has been authorised in the preceding 12 months.