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What is compliance?

1. This guidance sets out PHSO's approach to securing and monitoring compliance with our recommendations. It is applicable to all investigation cases where we have fully upheld or partly upheld a complaint of injustice or hardship as a consequence of maladministration (or service failure) and have recommended redress, or have already achieved a remedy.

2. If, following an investigation, a complaint is recorded as being fully upheld or partly upheld, any action we recommend to remedy the injustice should be recorded as a compliance item on Visualfiles. This applies to remedies agreed by the organisation investigated even if the issues are resolved before the final report has been sent. At least one compliance item should be recorded. We need to accurately record compliance items so that we can monitor and ensure compliance by organisations.

3. We also monitor compliance on cases closed at assessment as premature where we ask the organisation concerned to carry out further work to resolve a complaint at local resolution. In these cases we should record a premature compliance item on Visualfiles.

4. We expect government and health organisations that we ask to provide remedies for maladministration or service failure to do so in good faith, in full, and by the target date we set for compliance. The target date should be determined, where necessary, following discussion with the organisation about how long they will realistically need.

Our approach

5. We take a risk-based approach to monitoring and securing compliance with our recommendations and other requests for remedy. We concentrate our efforts on monitoring organisations whose compliance history indicates that they present a risk of non-compliance - that is, delay or failure to implement our recommendations.

Compliance ratings

6. We monitor each organisation's performance against our compliance approach and use the information obtained to determine their compliance rating.

7. Compliance ratings for each organisation are suggested by the Compliance and Outcomes Officers but are agreed with other relevant Operations staff.

Compliance ratings are recorded in the Visualfiles record for each organisation and are visible through the compliance screen and the assessment screen.

8. There are three compliance ratings, as follows:

- **A: Good compliance history - minimum risk of non-compliance**
Low risk organisations, which we are satisfied can be relied upon to comply with our recommendations or interventions without delay or argument.
- **B: Reasonable compliance history or insufficient information**
Medium risk organisations where we have had no reason to assign either a high risk or low risk rating to; this is the default category.
- **C: Poor compliance history - clear risk of non-compliance**
Organisation which we believe carry a significant risk of delayed compliance or non-compliance.

9. We will monitor the compliance performance of all public organisations that we ask to provide a remedy. Compliance ratings will be reviewed annually. Additionally we may review individual organisations' ratings as and when required by circumstances. Where we consider that there has been a significant improvement or deterioration in performance we will amend the organisation's compliance rating accordingly.

Refusal to accept a recommendation made in an investigation report

10. Where, following investigation of a complaint, a Parliamentary or health organisation refuses to accept a recommendation for remedy made in our draft or final investigation report, that is a serious matter. Such refusals should be referred immediately, through your Director, to the Chief Operating Officer or Ombudsman for consideration of further action, including whether we should pursue compliance. Where we decide not to pursue compliance in a case where we have issued the final report, the recommendation should be recorded on Visualfiles for statistical purposes but closed as 'not accepted'.

Compliance procedures

11. A compliance item must not be recorded on Visualfiles unless and until the organisation has accepted it and has agreed to implement the proposed remedy; or has specifically told us that they do not accept it.

12. In all cases we should ensure that the organisation understands the remedy we are asking them to provide and what action we expect them to take to comply; we should also set the organisation a realistic target date for compliance. Where necessary we should determine the target date in consultation with the organisation.

13. Where, exceptionally, it becomes apparent that an organisation is unlikely to be able to comply within the target date for a good reason (for example, where the complainant fails to provide bank details to facilitate payment of compensation), an Operations Manager at E1 level or above may agree to an extension of the original target date. Where this occurs we should consider whether it is appropriate to notify the complainant of the change and the reasons for it. The Compliance Officer (Richard Taylor) must be notified in all cases so that the revised target date can be recorded on Visualfiles.

14. We will continue to monitor compliance until we are satisfied that the organisation has implemented our recommendations or further work in premature cases. We will keep the complainant regularly updated on progress if the target date is exceeded. In all cases we should contact the organisation one week before

each compliance target date to remind them that compliance is due

15. A compliance item must not be recorded as closed until compliance has been achieved or, following the escalation procedure (paragraphs 20-23) the organisation have failed or refused to comply.

16. We consider compliance to have been achieved when we are satisfied that the relevant organisation has taken reasonable steps to implement our recommendations or agreed actions. Once we are satisfied, following an upheld investigation, that all of our recommendations have been complied with, we should write to inform the complainant and the organisation that our action is complete. In all cases the reasons for closure of compliance must be recorded on Visualfiles.

17. The way we assess evidence of compliance with recommendations will generally depend on the organisation's compliance rating.

- **For A-rated organisations** while we should ask for evidence that the remedy has been provided there will generally be no need to consider the evidence in detail. However where we have asked the organisation to prepare a lessons learnt action plan we should ensure that it is relevant to the failings we have identified.
- **For B-rated organisations** we should consider the evidence to check that the remedy is satisfactory and in line with the Ombudsman's Principles and any specific standards relevant to the case (such as legislation, guidance and professional standards). In health cases, we should consider if it is necessary to seek a clinical opinion to support our view. This is not always necessary, but we may need clinical advice when reviewing evidence of systemic improvements, particularly where the failings are very serious and/or involves complex/technical matters.
- **For C-rated organisations** we should consider the evidence to check that the remedy is satisfactory and in line with the Ombudsman's Principles and any specific standards relevant to the case (such as legislation, guidance and professional standards). In health cases, we should consider if it is necessary to seek a clinical opinion to support our view. This is not always necessary, but we will generally always seek clinical advice when reviewing evidence of systemic improvements.

18. Where we have published a case and laid the report before Parliament, the final decision on whether compliance has been achieved rests with the Ombudsman. Where we receive evidence of compliance on a published case, the file should be referred to the Ombudsman's Casework Team to determine whether compliance has been secured and whether action needs to be taken to notify Parliament and the wider public.

19. If an organisation refuses to provide a remedy that they have previously agreed to, we should initiate the escalation procedure below.

Escalation procedure

20. The escalation procedure should be used in all cases where an organisation fails to meet our requirements for compliance (for example, missed target date; extended delay; prevarication over the terms of the remedy; incomplete, inadequate or flawed remedy; and absolute refusal to comply). The approach set out below should be followed, unless the individual circumstances of the case

dictate otherwise.

21. Absolute refusal to comply with an agreed recommendation at any stage should prompt us to implement stage 3 of this escalation procedure.

22. Please notify the Compliance Officer in every case where the escalation process is used. The procedure is as follows:

- Stage 1: In all cases, a letter requesting response, or if appropriate an explanation of why we are concerned about compliance and requesting a response;
- Stage 2: If no satisfactory response - Deputy Director-level letter; then
- Stage 3 (Investigation): The Deputy Director should confer with the Director as to what action to take (including further escalation) in the light of continued non-compliance following stage 2.
- Stage 3 (Premature cases): If the organisation has failed to provide a satisfactory response to the Stage 2 letter, we should consider whether the case is suitable for investigation, on the basis that local resolution has not resolved the complaint. (The exact action to take here should be discussed and agreed with the Director/Deputy Director but would involve either reopening the enquiry or creating a new one to allow it to be reassessed). Compliance action should be closed as not complied with.
- All letters issued under the escalation procedure must set a specific timescale for the organisation to reply and any failure to respond should be acted on promptly. The exact timescales should be decided on a case by case basis, but we would normally allow a minimum of 7 and no more than 14 calendar days for such replies.

23. We will generally pursue compliance action on recommendations until we are satisfied that the organisation has provided, or made every reasonable attempt to provide, the recommended remedy. Decisions to close compliance action exceptionally where compliance with a recommendation has not been secured may be taken only by the Ombudsman, Chief Operating Officer, Interim Director of Operations or Interim Director of Business Development who will also consider whether to:

- escalate to appropriate regulator or professional body;
- publish a summary of the case naming individuals where appropriate;
- ask an umbrella organisation (for example the relevant commissioning organisation) to apologise and pay any financial redress if applicable.

Who to contact

24. For general enquiries about our compliance process, or about compliance with a recommendation for remedy, please contact Andy Dawson (Outcomes Officer; ext 4901) or Richard Taylor (Compliance Officer; ext 4234)

Annex: How the compliance ratings are defined

Factors which may merit an **A-rating** could include some or all of the following:

- repeated compliance with all recommendations within the initial target date or within an agreed timescale;
- positive engagement from the organisation concerned over how to implement (or improve) the recommended remedy;
- other evidence of a positive and constructive approach to complaint handling and the provision of remedy in line with our Principles; and

- demonstration of commitment to our Principles for Remedy and our expectations about providing a remedy promptly.

Our default position is **B-rating**. This could mean that either we do not have enough information to make a reliable assessment of how well the organisation will engage with our recommendations, or the evidence we do have does not indicate any reason to assign either an A or C rating.

Factors which may merit a **C-rating** could include some or all of the following:

- failure to implement a final report recommendation;
- repeated refusal to agree recommendations in draft reports;
- querying or disputing the terms of report;
- repeated excessive or unreasonable delays in implementing recommended remedies;
- failure to conclude compliance within initial target date in a significant proportion of cases.
- evidence that the organisation has acted in bad faith - for example, saying that they have implemented a remedy when they have not; representing old policies as new, etc; and
- any other action which in our opinion represents an unwillingness to comply or signals a failure to accept the Principles for Remedy.