

Parliamentary and Health Service Ombudsman (PHSO) Casework Policy and Guidance

Section 2.6: Resolution through intervention

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What is 'resolution through intervention'?

2.6.1 'Resolution through intervention' happens when, during the assessment process, we agree with a body in jurisdiction that they will take action to resolve finally the complaint against them, enabling us to close it on the basis that there is no unremedied injustice. Interventions normally focus on obtaining a timely and individual remedy for the complainant/aggrieved.

2.6.2 It is **not an intervention** where we ask bodies in jurisdiction to undertake consideration or rework of a complaint, or to provide a further explanation in order for complaints procedures to be completed satisfactorily. Such cases will be treated as 'premature' because the complaint may be referred back to PHSO if the complainant remains dissatisfied following the body's further consideration. We cannot, therefore, say that agreeing such an action resolves the complaint.

2.6.3 It is **not an intervention** where our contact with the body results in them taking further action to 'add value' (perhaps even dealing with the immediate issue) but where the complainant may still wish to bring the complaint back to PHSO at a later stage or where we have resolved only part of the complaint. Such cases should be closed as '*Value added by PHSO*'. Value added closures can occur at both preliminary assessment [\[link to 2.4.93\]](#) and further assessment [\[link to 2.5.7\]](#).

## Why we try to resolve complaints through intervention

2.6.4 Interventions resolve complaints quickly and effectively and provide a customer focused service, in line with the *Ombudsman's Principles*, and avoid the need for an investigation.

## What types of case are suitable for attempted resolution through intervention?

2.6.5 We would normally consider an intervention where we have assessed that the complaint is properly made and where we have some indication of maladministration or service failure and some evidence of an injustice arising in consequence. However where we consider that prompt action may fully and finally resolve an in-remit complaint it is not necessary to fully assess the case prior to attempting the intervention.

2.6.6 Cases suitable for intervention are also most likely to present a clear, simple and achievable remedy which finally resolves the complaint. Examples of such remedies include: compensation for clear or admitted errors; apologies; and getting a delayed claim, appeal or application progressed. In some circumstances a detailed explanation may also be an appropriate remedy. However we need to be certain that the explanation will provide a satisfactory outcome for the complainant; we should generally wait until we have seen the explanation before recording an intervention.

## Which cases are less suitable for an intervention?

2.6.7 Certain types of case may not normally be suitable for attempted intervention, including:

- complex cases which cover a number of different unresolved issues;
- high risk cases, or ones where the subject matter of the complaint is particularly serious and might lend itself more to an investigation; and
- cases where it is difficult to pinpoint the injustice at assessment and so difficult to reach a view on the appropriate remedy.

Such cases should normally be considered for investigation (please refer to section 2.7).

2.6.8 While most types of remedy are suitable for interventions, we should exercise caution if the complainant is seeking a systemic remedy (action to prevent the same thing happening to others). As we are making no findings, we are not in a position to say that there is a wider problem which the public body should address. This does not mean that we should not explore the possibility of a systemic remedy or agree where it is offered. However we should be aware that it may not be appropriate to press a public body to make significant systemic changes on the basis of a single complaint that we have not investigated.

## What makes a good intervention?

2.6.9 Interventions should be clear, simple and achievable. The proposed remedy should be SMART:

- **Specific:** clearly articulated. Avoid asking a body to simply 'consider' taking a course of action.
- **Measurable:** it is in no one's interest to pursue an intervention that means it is difficult to satisfy ourselves that compliance has been achieved.
- **Achievable:** the body must be in a position to resolve the complaint.
- **Relevant:** it should be a reasonable and proportionate remedy for the injustice.
- **Time-bound:** we should give the public body a realistic timescale to implement the remedy.

## Process for attempting a resolution through intervention

2.6.10 Attempted interventions should (**PHSO policy requirement**):

- focus on obtaining an individual remedy for the complainant/aggrieved; and
- seek to obtain a specific response from the body that will provide what is, in our view, a reasonable remedy for the complainant/aggrieved.

2.6.11 The first step is to read the papers carefully and consider whether there is some indication of maladministration/service failure, and injustice, and whether there is potential to resolve the matter through an intervention. This potential arises when there is a reasonable prospect that, without investigating the complaint, the public body will agree to provide a remedy proportionate to the injustice claimed by the complainant. (Note: we are not limited to seeking a remedy from the body complained about. For example, we might decide to approach the commissioning body for a health service if we have been unable to resolve matters directly with the service provider. However we should only contact a body that is not a party to the complaint if we are satisfied that we are doing so for the purposes of an investigation. We should obtain the complainant's agreement before attempting any such contact).

2.6.12 It is **not** a policy requirement to attempt to resolve a complaint through intervention before the case may be considered for investigation.

2.6.13 Key factors to consider are:

- is there reasonable evidence to support the complainant's contention that an injustice has arisen as the result of maladministration/service failure?
- if a health complaint includes clinical matters we should consider whether to seek advice from an appropriate clinical adviser, in accordance with our guidance on clinical advice [LINK];
- do we have a clear understanding of the claimed injustice?

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- is the body complained about likely to be able to provide an appropriate remedy for the claimed injustice quickly and easily? This could include taking steps to put matters right; providing an apology; or providing a financial remedy. Any remedy must be proportionate to the injustice and consistent with other remedies;
- the scale of any likely remedy, particularly where there are significant financial implications for the public body;
- are any issues raised in the complaint and/or the remedy likely to be contentious?
- the body's response to any previous similar complaints - were they constructive and willing to engage with us?
- the seriousness of the matters complained about;
- is there any reason why the complaint should be investigated? Is it of wider interest; does the maladministration/service failure potentially impact on others?

2.6.14 It is important that we understand the injustice claimed and the remedy sought, so unless those are reasonably apparent from the papers we should speak to the complainant before contacting the public body. Usually this contact will be at the start of the further assessment process (see section 2.5.4) [insert link]. We should advise the complainant that we may ask the body to provide a remedy without conducting a full investigation of their complaint, while taking care to manage their expectations about remedy.

2.6.15 Our basic principles for determining remedy are as follows:

- remedy is always for injustice, not for the maladministration/service failure that caused it;
- each case must be considered on its own merits; we do not operate a tariff system for determining redress;
- as far as possible we should try to achieve consistent remedies for similar degrees of injustice, taking into account the outcomes that have been achieved in similar cases and any other relevant reference points (for example, Judicial Studies Board Guidelines). The Outcomes Officer [raises email link] can provide further advice if required;
- the proposed remedy should be an individual remedy which finally resolves the complaint against the specific body concerned.

2.6.16 Once it has been decided to attempt an intervention, we should record that and details of the proposed intervention on Visualfiles. There should always be an audit trail of our decisions. It may not always be immediately apparent that the case is suitable for an intervention and in some cases the possibility of obtaining a remedy may only emerge in response to enquiries of the body or, in some cases, be suggested by the body itself. In those circumstances, it may not be necessary to follow all of the steps set out below.

2.6.17 If we think an intervention may be achievable we should initially contact the body's PHSO focal point (if there is one), or the complaints manager, patient experience manager or other appropriate person responsible for dealing with complaints.

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2.6.18 The amount of information that it is necessary to give the body should be determined on a case by case basis, but we should generally:

- explain that the purpose of our approach is to resolve the complaint promptly without the need for an investigation;
- set out sufficient background to the complaint;
- summarise our assessment of it, highlighting the perceived maladministration/service failure and unremedied injustice. Make it clear that we have not made formal findings about maladministration/service failure and injustice;
- ask the body to consider the complaint as set out;
- ask the body to issue a written apology to the complainant/aggrieved;
- explain to the body what specific actions in addition to an apology we would like them to take to address/remedy the injustice;
- offer to discuss any elements of the case;
- set a specific date for the body to let us have a substantive response (usually up to a maximum of two weeks).

2.6.19 We would not generally leave it to the body to decide the appropriate remedy but there may be circumstances where that is appropriate, for example, if the body suggests a course of action to put matters right. However, if a body does suggest a remedy we should still apply our normal considerations (see 2.6.15) in order to determine whether the remedy is appropriate rather than simply accepting what has been offered.

2.6.20 Generally we should give the body one opportunity to take the agreed actions. If the body refuses to agree to what we consider to be a reasonable remedy, or there is a significant delay (that is, in excess of one week after the target date) in receiving their response, you should escalate the matter via your line manager to the Director, or relevant Deputy Director, of CS&A. We should aim to begin the escalation process within two weeks of the refusal or the date we have asked the body to respond.

2.6.21 If the body accepts the proposed action, then we should obtain written confirmation (email is acceptable) from them of the exact action they have agreed to take. This confirmation should include a specific timescale within which the body will implement the agreed remedy (we would usually expect that timescale to be within four weeks; although this may need to be varied depending on the nature of the agreed remedy). **(PHSO policy requirement)**

2.6.22 We should then contact the complainant (normally by telephone) to say that we agree that there is some indication of maladministration/service failure on the part of the body complained about and to explain what action the body have agreed to take, and by when. We should also explain that we will confirm our decision in writing and will monitor the body's compliance with the agreed remedy. If the complainant expresses strong objections to the adequacy of the proposed remedy then we should consider whether it is appropriate to proceed with closing the case as an intervention. The assessment of any

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such objections and the rationale for proceeding with the intervention in those circumstances should be recorded fully on Visualfiles. **(PHSO policy requirement)**

2.6.23 If we are unable to secure a reasonable remedy by intervention (for example, if the body refuses to do so) then the enquiry should be reconsidered and a decision taken quickly on whether it should be proposed for investigation (please refer to section 2.7) or whether it should be declined. The rationale for doing so should be recorded on Visualfiles. **(PHSO policy requirement)**

2.6.24 Where a body in jurisdiction agrees to provide an appropriate remedy, their agreement will generally be sufficient grounds for us to decline a complaint for investigation on the basis that a resolution through intervention has been achieved. If the body fails to act within a reasonable timescale (or at all) to provide the remedy then a decision will be taken on a case by case basis as to how to proceed.

2.6.25 The judgment on whether a reasonable remedy has been provided is one for PHSO. It follows that we may decide to decline a complaint for investigation on the basis that a resolution through intervention has been achieved even in the face of objections from the complainant. However we will take into account the complainant's views on the proposed remedy before deciding whether to close a case on the basis of a successful intervention. If, following the issue of our decision letter, a complainant is dissatisfied with a remedy which we consider to be reasonable then the matter should be referred to the Review Team as a potential complaint about us.

### Communicating the decision

2.6.26 Please remember that cases that are being treated as successful interventions are being declined for investigation and should be approved and signed off in line with the PHSO Delegation Scheme [link] and reference should also be made to the guidance on approving decisions under the Scheme [link]. **(PHSO policy requirements)**

2.6.27 You should follow the detailed guidance set out in section 2.5 on communicating the decision [link] and in 'Writing decision letters and reports' [link]. Our decision letter must explain what the complaint is, what we have done to consider it and set out our conclusions fully. We should make clear -the claimed injustice, and should focus on the positive outcome we have achieved. It will not usually be necessary to provide further information about the matters leading to the complaint. We should set out the resolution that we have achieved, including full details of the agreed remedy including timescale, and say that we will monitor compliance with the remedy. The information you should provide about monitoring compliance will vary depending on the body involved (see 2.6.28 below). Finally, we should explain that as the complaint is now resolved we do not propose to take any further action on the complaint. **(PHSO policy requirement)**.

2.6.28 At the point of case closure you should also write to the body (this can be by email) to confirm the specific action we are expecting them to take and the timescale for compliance. **(PHSO policy requirement)** We take a risk-based approach to monitoring and securing compliance which will vary depending on the body involved. The specific procedures to follow (including how we will monitor compliance and what you should say

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to the body and complainant at this stage) are set out in detail in the guidance on 'Securing compliance with our recommendations and interventions' [link].

### Visualfiles

2.6.29 Successful interventions must be recorded on Visualfiles using the closure detail code of 'No evidence of unremedied injustice' and the enquiry action code of 'Intervention short of an investigation.' (PHSO policy requirement)

2.6.30 Where a case is being recorded as an 'intervention short of an investigation' a 'compliance plan' for each action proposed to resolve a complaint **must** also be added to Visualfiles. (PHSO policy requirement)

2.6.31 Where a body refuses to agree a reasonable intervention, please notify the Compliance Officer who will arrange for the failed intervention to be recorded on Visualfiles. (PHSO policy requirement)

2.6.32 For further information about recording the outcomes of interventions on Visualfiles and the monitoring of compliance with interventions please contact the Assessment Outcomes Officer [raises email link] or the Outcomes and Learning Compliance Officer [raises email link].

### Post-intervention action

2.6.33 If the complainant is dissatisfied with our decision to close the case on the basis of the remedy promised (for example, if they believe the actions we have asked the body to undertake do not offer a sufficient remedy) then the contact would normally be referred to the Review Team as a potential complaint about us [link]. A decision on whether or not to accept a complaint for review before the body has had the opportunity to implement the proposed remedy will be taken by the Review Team.

2.6.34 A body's compliance with an agreed resolution through intervention will be monitored by the Assessment Outcomes Officer [raises email link]. If a body fails to implement the agreed remedy (for example, if they have done something different) or they do not act within the promised timescale then the escalation procedure set out in the guidance on 'Securing compliance with our recommendations and interventions' [link] will be followed. Any contact or correspondence reviewed by the Assessor on the enquiry should be considered and noted on Visualfiles. If compliance has been achieved the plan should be closed on Visualfiles. If there is any doubt whether compliance has been achieved the matter should be directed to the Assessment Outcomes Officer [raises email link].

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## Examples of good interventions

### Example 1

Mr J, who has a learning disability and mental health problems, complained that he was wrongly placed on a Trust's Special Allocations Scheme for dealing with violent patients and wrongly retained on the Scheme. He said that this had left him out of pocket to the amount of £2000 for travelling costs and telephone costs from being on the Scheme.

Our assessment showed that there were clear indications of maladministration by the Trust: they did not seem to have ensured that the evidence for placing Mr J on the Scheme was robust; nor did they give Mr J the opportunity to challenge any of the information presented; and the decision to place him on, and retain him on, the Scheme was due to the perceived absence of a suitable service to meet his healthcare needs. In addition, the Trust's response to Mr J's complaint did not acknowledge any failings in placing him on the Scheme nor in reviewing his registration on it.

As a result of our intervention the Trust agreed to issue an apology to Mr J (a copy of which would be placed on his medical file) and to pay him £2000 for the costs he had incurred. The Trust also agreed to look at how their service could be improved and to tell Mr J about any changes made as a result of his complaint.

### Example 2

Mr B complained about a Trust's failure to provide his late sister with antibiotics following her admission to hospital when suffering from diarrhoea and vomiting. Mr B's sister died three weeks after her initial admission from complications relating to sepsis.

In response to Mr B's complaint to them, the Trust had acknowledged that antibiotics should have been given to his sister on admission, apologised and drew up an action plan. However, they could not say that Mr B's sister would have survived had she received the antibiotics promptly.

When the Assessor discussed Mr B's complaint with him he said that he wanted financial compensation and disciplinary action taken against Trust staff. We considered evidence supplied by Mr B, took clinical advice and asked the Trust to consider making a payment to Mr B.

This case required extensive liaison as Mr B initially wanted a higher level of compensation and the Trust made, and then withdrew, their first offer of payment. As a result of our intervention the Trust agreed to make a payment of £10,000 to Mr B.



### Example 3

Mrs T complained that a Trust had failed to provide an adequate remedy for the impact of their admitted communication errors which had led to her undergoing two sessions of chemotherapy unnecessarily. Mrs T sought financial redress and said that she had suffered distress and trauma as well as losing all her hair.

Our assessment, which included taking clinical advice, noted that Mrs T's diagnosis (of Hodgkins' lymphoma) was only provisional and that chemotherapy had been arranged in advance (probably to save time had the diagnosis been confirmed). However, Mrs T's treatment had gone ahead without any check on the final histopathology report and there had been no histopathology presence at a lymphoma multi-disciplinary team meeting which would have clarified the diagnosis or identified it as uncertain.

In its response to PHSO, the Trust acknowledged its errors, apologised and explained what action it would take to prevent a recurrence. It also made a payment of £5,000 to Mrs T for the distress caused to her.

### Example 4

Mr D complained that HM Revenue and Customs' Tax Credit Office (TCO) had wrongly sought to recover half of a tax credits overpayment from him, when he said that the entire amount had been claimed by and paid to his former wife without his knowledge. Mr D said that he should not have to repay the tax credits.

Mr D's complaint had been considered previously by the Adjudicator, who had concluded that TCO had acted in line with their guidance.

While our assessment identified that TCO were entitled to seek to reclaim half of the overpayment from Mr D and that the Adjudicator had reached reasonable conclusions, we noted that neither of them had considered applying 'notional entitlement' (which is designed to alleviate hardship by reducing or cancelling an overpayment where there has been a change in circumstances and that change would have carried a potential entitlement to another claim).

As a result of our intervention, TCO agreed to apply notional entitlement to Mr C's claim which resulted in the £1,075.47 he had been asked to repay being written off.

### Example 5

Mrs C complained that the Legal Services Commission (LSC) would not pay the legal costs she had incurred through engaging a solicitor when LSC incorrectly added interest to a charging order. LSC had offered £100 to Mrs C in recognition of the extra work she was put to as a result of their error but said it had been her own decision to engage a solicitor.

Mrs C had initially challenged LSC's decision herself and had been told that the interest was payable but that she could request a review; which she then engaged solicitors to take forward (successfully) on her behalf.

Our assessment took the view that LSC had mishandled Mrs C's claim for legal costs. They had not considered the particular circumstances of Mrs C's case when she had challenged the decision herself; nor had they taken into account that it was the solicitors who had identified that the wrong law/regulations had been applied or considered it unlikely that Mrs C would have established this without the use of her solicitors.

As a result of our intervention, LSC agreed to pay Mrs C's legal costs of £1,649.86, plus the £100 offered previously.

### Example 6

Mr S complained that he had sent three tax credits claim forms to the Tax Credit Office (TCO) between November 2009 and March 2010, but that TCO had only acknowledged receiving a claim in April 2010 which had affected the backdating of his claim. He also complained about poor complaint handling and misinformation by TCO and that the Adjudicator had upheld the decision on backdating. TCO had already paid Mr S £50 for giving incorrect and conflicting advice.

As a result of our enquiries, TCO looked again at their guidance on the backdating of tax credits and agreed that it could be applied to Mr S's case (because he had contacted them to make enquiries about the claims he said he had submitted). As a result, TCO backdated his tax credits claim further which resulted in him being awarded £504.39 Working Tax Credit; they also apologised and paid Mr S an additional £30 to recognise the fact that, had TCO followed their guidance, he would have received the payment earlier.