

TYPOLOGY OF INJUSTICE

What is the Typology of Injustice?

Typology of Injustice (TOI) is a project that aims to record and describe all injustice types identified in PHSO casework, in the form of a comprehensive and structured list (typology) of injustice types seen in PHSO investigations. This information will then be made available to caseworkers in the form of two reference tools:

- The 'Identifying Injustice' tool – a list of all identified injustice types, supported by definitions and case examples, to help caseworkers identify and describe injustice.
- The TOI Precedent Search tool – this is a searchable spreadsheet application, containing details of upheld complaints from 2010/11 onwards where we recommended financial redress, classified by type of injustice, with details of the financial remedy. [NB the TOI Precedent Search tool is not available outside of PHSO.]

Injustice in this sense is taken to mean any adverse impact on the aggrieved that occurs as a consequence of service failure or maladministration.

The purpose of the TOI tools is to help caseworkers to identify and describe injustice, by providing definitions of types of injustice. This may improve the quality of our investigation reports by ensuring that all injustice in consequence of service failure or maladministration is recognised and described. It may also improve our recommendations for remedy by ensuring that all injustice is taken into account, and by providing a basis for comparison between cases with similar types of injustice, thereby improving consistency.

How does the typology of injustice work?

The typology recognises four main categories of injustice:

- **Emotional injustice:** the impact of maladministration or service failure on the aggrieved person's feelings. This is typified by, but not limited to, feelings of upset, anger, worry or uncertainty.
- **Material injustice:** this arises where there is a negative impact on the aggrieved's material existence. This may involve money or property, but also non-physical entities such as rights, relationships, opportunities and quality of life.
- **Physiological injustice:** the impact on the aggrieved's physical or mental health or wellbeing. This includes all aspects of pain, injury and illness, and any worsening (or worsened prognosis) of the aggrieved's physical or mental health.

- **Bereavement:** this injustice may arise in any situation where service failure is a direct or contributory cause of death; or where failures in care, service or administration either before or after death exacerbate the grief suffered by the deceased person's spouse, partner or close family. Whilst the injustice suffered may be similar to types within the Emotional Injustice category, the Bereavement category recognises that the impact of a death will be different to, and usually greater than, most forms of emotional injustice.

Each category is further subdivided into a number of **types** of injustice, which describe the specific impact of maladministration or service failure on the aggrieved. Each type has a short descriptive name, and is also identified by an alpha-numeric code that uses the first letter of the injustice category together with a number (e.g. E2; B1). This is for general ease of reference, and to facilitate searching within the Precedent Search tool. Within the TOI documentation, each type is also supported by a full description and case examples.

A complaint may give rise to several different types of injustice, in one or more categories. Most cases will give rise to multiple injustice types. However, in practice it may not always be helpful to break the injustice into too many fragments, but to focus on those aspects that have had the most significant impact on the aggrieved. In the Precedent Search tool, up to five injustice types are recorded against each case. The 'primary injustice' is the injustice type which we consider has the greatest impact on the aggrieved and which therefore is the main determining factor in our decisions on financial remedy.

The injustice types in the TOI have all been identified in previous PHSO casework. If an injustice type is found which has not been identified previously it will be added to the TOI.

Between September 2014 and March 2015 TOI was reviewed by an internal user group who agreed that a number of injustice types should be removed. These were mainly types which were effectively minor variants of other injustice types, or which in fact described the service failure or maladministration rather than the injustice.

Category E: Emotional injustice

Definitions of injustice category and types

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Category E: Definition

These injustice types describe the impact of maladministration or service failure on the aggrieved person's feelings. This has previously tended to appear in our reports and decision letters as 'distress'. The typology expands 'distress' to recognise that there are many different forms of emotional injustice some of which are generic and others that will usually arise in specific circumstances.

E1: Anger, frustration and outrage

These are feelings of anger, upset, frustration or belligerence. They are essentially reactive forms of distress. The impact of maladministration or service failure may vary between individuals, both in terms of the degree of upset experienced and the individual's capacity to absorb it. This type of injustice is a natural human response to an adverse situation; as such, it may be difficult to identify the upset that arose solely in consequence of service failure or maladministration.

Where we have identified an emotional injustice type other than E1, we should consider whether it adds any value to also record type E1, given that most complaints, by definition, involve some element of annoyance or upset. We should generally only record type E1 where it is either the only injustice or it is a significant factor in the combined injustice.

NB: E1= Anger; E2=Anguish

E1 case example:

Mrs E complained that the Legal Services Commission (the Commission) mishandled her original claim for legal aid. We found that the Commission did not take all relevant information into account in their decision making, nor did they follow their own procedures in determining Mrs E's eligibility for legal aid. We also found that, once the Commission had identified their error, they failed to consider properly how they should compensate Mrs E for their maladministration. We found that, but for the maladministration, Mrs E would have been granted legal aid sooner. We found that the Commission's incorrect decision and their refusal to put this right 'was very, very stressful, distressing and frustrating' for Mrs E at an already difficult time. We also found that that Mrs E suffered additional expense (injustice type M2) as she needed to instruct her solicitors on a private basis. In October 2011, we recommended that the Commission reimburse Mrs E the additional costs of her legal fees and pay her a sum of £250 in recognition of the stress, distress and frustration she experienced as a result of their maladministration.

E2: Anguish; worry; anxiety; uncertainty

This injustice arises specifically where a situation has, or had, the real or perceived potential to result in further adverse consequences; for example, worry that failures in care and treatment may cause future deterioration in health; worries about possible future material loss. These future implications may be short term or may already have been resolved at the time of the complaint.

NB: E1= Anger; E2=Anguish

E2 case example:

Mr E complained that the General Social Care Council's (GSCC's) investigation into the allegations of misconduct against him took too long and was unfair. He also complained about the manner in which they handled his complaint. We found that GSCC's investigation should have been concluded at least 16 months sooner than it was. We found that this unduly extended investigation increased the stress and anxiety felt by Mr E as a result of being the subject of such serious allegations. Furthermore, while we could not say that it was the cause of, or to what extent it contributed towards it, we found that the delayed conclusion of the investigation

exacerbated Mr E's depression (injustice type P5). In March 2011, we recommended that GSCC make Mr E a consolatory payment of £2,000 to recognise the impact the failings had on him and his family.

E3: Distress at witnessing or learning of pain to loved one

This is a particular form of distress that arises when the aggrieved witnesses significant pain or distress to a spouse, partner, child or other person with whom there is a close relationship. Its usual use will be in health cases where there is evidence of poor care and treatment, often in relation to pain management, hydration or nutrition (although it may arise from any aspect of poor clinical or nursing care). Generally, we would expect the aggrieved family members to be present and to witness the patient's distress. Exceptionally, there may be cases where the patient's suffering is so severe that learning of it without witnessing it may cause significant distress.

We should exercise caution in using this type, and should not assume that service failures will automatically impact on other family members in this way.

E3 case example:

Miss D complained about the care and treatment provided to her mother, Mrs D, by [redacted] NHS Trust (the Trust). We identified failings in the care and treatment Mrs D received, including a lack of care planning, risk of constipation, incontinence and discharge; lack of malnutrition risk assessment; lack of proper assessment to inform the use of a hoist; failure to change or to document changes of incontinence pads and a buprenorphine patch; and inadequate and hasty discharge arrangements. This service failure by the Trust led Mrs D to experience unnecessarily suffering, which was witnessed by Miss D. Miss D, who was her mother's full-time carer, told us she felt distressed at having to witness the poor treatment and because she was not being told what was going on in relation to her mother's condition. We also found maladministration in the way the Trust handled Miss D's complaint. This maladministration by the Trust contributed to the injustice of unnecessary distress and frustration for Miss D, and the inconvenience of having to pursue the complaint further (injustice type M17). In July 2011, we recommended that the Trust provide Miss D with the sum of £1,000, both for the distress caused at witnessing her mother's suffer and for the Trust's poor complaint handling.

E4: Embarrassment; humiliation; loss of dignity

This injustice type is self-explanatory and may arise in any situation where service failure causes the aggrieved to suffer embarrassment. It also includes injustice where the aggrieved complains of feeling victimised.

Typical examples are in health complaints where patients are treated in a way that denies them privacy or dignity.

This injustice type may be related to type M8 if it extends to failure to take into account or adjust for statutory or other rights.

E4 case example:

Mrs G complained that the care her aunt, Mrs T received at the [redacted] NHS Foundation Trust (the Trust) was unsuited to her specific needs. She said that no consideration was given by staff to Mrs T's comfort and wellbeing, or to her cultural and linguistic needs as a Deaf sign language user. We found serious shortcomings in relation to the Trust's care of Mrs T and her belongings, and in their communication with Mrs G. We found that the Trust failed to personalise Mrs T's care by not to maximising her independence, choice and control, listening to and responding to her preferences, and acting to alleviate any loneliness and isolation. We found that as a result of these failings it was likely that Mrs T suffered from additional unnecessary distress from being confused and frightened (injustices type E2). We also found that the failure to personalise her care, and to provide a holistic service that met all of Mrs T's needs as a Deaf person meant that her dignity and individuality were compromised. We also found she suffered unnecessary distress and the loss of some of her belongings (injustice types E1 and M2). In September 2010, we recommended that the Trust should pay £1,000 for the distress and indignity Mrs T experienced as a result of its failings (in light of Mrs T's death this payment was made to Mrs G).

E5: Loss of enjoyment of significant event

This injustice type occurs where a significant event is spoiled or overshadowed by maladministration or service failure which reduces the enjoyment thereof, or prevents attendance. Typical examples are where a wedding and honeymoon take place against a background of uncertainty about one of the couple's immigration status, or where the aggrieved is unable to travel abroad to attend an important family event. However this does not mean that every missed holiday or family occasion gives rise to this injustice. We would need to consider the nature of the event, the closeness of any family relationship, and any relevant cultural norms.

This type may also be applicable in events not normally associated with enjoyment; for example funerals. In health cases it has appeared several times in relation to the aggrieved's poor experience of childbirth.

E5 case example:

Mr and Mrs K complained that the UK Border Agency's (the Agency's) handling of Mr K's further leave to remain applications in 2008 was poor,

that the Agency provided Mr K with misleading information and failed to thoroughly consider their complaint. We found that the Agency's failure to provide correct information or properly process his visitor visa application meant Mr K used the wrong process in trying to marry and settle in the UK. We also found that the Agency failed to properly handle Mr and Mrs K's complaint. We found that because of the Agency's maladministration, Mr and Mrs K had to deal with the unnecessary stress of the appeal, which would have affected their enjoyment of their wedding and their honeymoon. We also found that the Agency's poor case and complaint handling also caused Mr and Mrs K inconvenience, frustration and distress (injustice type M17). In July 2010, we recommended that, in recognition of the unnecessary stress, frustration, anxiety and inconvenience they caused Mr and Mrs K, at a time which was meant to be a happy occasion, the Agency should make Mr and Mrs K a consolatory payment of £500.

E6: Not in use

This injustice type was removed from the Typology as part of the 2015 Typology of Injustice review.

E7: Significant traumatic experience

By trauma we mean a deeply distressing or disturbing experience, usually arising in exceptional or one-off circumstances. This type of injustice goes well beyond the levels of injustice to which we would assign injustice types E1 or E2. Its key feature is severe emotional shock that has a lasting and substantial impact on the aggrieved. Where the aggrieved refers to trauma we should decide whether they mean a severe emotional shock as described above, or whether they are referring to distress as defined by type E1.

E7 case example:

Mrs A complained that [redacted] NHS Trust (the Trust) did not properly assess the risk that her husband posed to her. Mrs A said that as a result of the Trust's failings, her husband was wrongly allowed to take home leave and, during that leave, he violently attacked her, leaving her physically and psychologically damaged. Mrs A told us that she is still physically affected by the attack: [redacted]. She is also psychologically affected: [redacted]. Our investigation found that the Trust did not adequately assess the risk posed by Mr A to his wife either before or after his alleged attack on her. We said that the injustice described by Mrs A of the physical and psychological damage sustained that day was obviously not directly caused by the Trust. However, were it not for the failings in their risk assessment, it almost certainly would not have happened. We therefore concluded that the injustice described by Mrs A was in consequence of the service failure we identified. In June 2010, we recommended that a payment of £5,000 be

made to Mrs A by the Trust, in order to compensate her appropriately for the injustice she suffered.

E8: Loss of opportunity to prepare for distressing news

The key factor here is that there must be some action that a public body could reasonably have been expected to take which would have had the effect of reducing the impact of distressing news. A typical scenario is where an adverse clinical prognosis is not communicated effectively, so that the aggrieved is shocked and unprepared when her or his condition deteriorates.

E8 case example:

Ms W complained about the care and treatment she received whilst she was a patient at the [redacted] NHS Foundation Trust (the Trust). Ms W complained that the surgery undertaken was not the procedure she understood she had consented to. She told us she felt her life was placed at risk as she was not aware of the likelihood of cancer returning in the remaining breast tissue. We found that an appropriate consent process was not followed in relation to Ms W's bilateral mastectomy and that she was not provided with suitable and adequate information regarding the procedure and the associated risks of that surgery. As a consequence of this, we found that it would have been a cause of distress and discomfort to Ms W to have suffered a recurrence of cancer when she believed that the surgery she had received had virtually removed this risk, and from the knowledge that the surgery she underwent was not that which she believed she had received. In November 2010, we recommended that the Trust provide Ms W with a financial remedy of £1,000 in recognition of the distress caused to her.

E9: Loss of confidence in public service or health service provision

This injustice occurs when we consider that the standard of service provided was so poor that the aggrieved develops what we consider to be a reasonable doubt about the quality of any future service provision. This may relate to provision on any scale, from specific services to the workings of an entire hospital, trust or public body. We would usually expect the aggrieved to have some ongoing need for the service provision in question.

There may well be a material aspect to this injustice type; for example, the aggrieved may well feel that they have no option other than to receive the service elsewhere, or not receive it at all, rather than risk further maladministration or service failure. Where this gives rise to practical difficulties we should also record the appropriate material injustice type, (usually type M3).

E9 case example:

HS-60429 - Mrs P complained that [redacted] NHS Trust (the Trust) took 1 hour and 23 minutes to attend to her elderly mother and that the Trust's response to her complaint was inadequate. Mrs P said that the Trust's responses to her complaint did not provide her with any evidence that the Trust had investigated the root cause of the delay or that they had taken any steps to prevent recurrence. She said that as a result of the Trust's failure to address her concerns, she no longer had confidence in their ability to respond properly to 999 calls that she might have to make in the future. We found service failure with regard to the delay in the ambulance arriving for Mrs B and maladministration with regard to the Trust's handling of Mrs P's complaint. We found that the service failure identified resulted in the injustice of unnecessary distress (injustices type E3), above that which she was already feeling as a result of the potential seriousness of her mother's condition. We also found that the maladministration we identified resulted in her loss of confidence in the ability of the Trust to meet her needs in the future. In June 2010, we recommended that the pay Mrs P the sum of £500 as financial redress for the unnecessary distress caused by the failings we identified. We also recommended that the Trust formulate an action plan to ensure that they have learnt lessons from the failings we identified, specifically with regard to excessive delays in 999 call response times.

E10: Inability to move on or obtain closure

This usually arises in circumstances where a body's complaint handling is so poor that there is no prospect of the complainant ever finding closure or peace of mind, in respect of the substantive matters complained of. It is closely linked to injustice type M16, which occurs where, due to delay or poor record keeping, we are unable to make definitive findings about the substance of the complaint. It is not intended to reflect uncertainty or distress about the matters complained of while any investigation is ongoing. Where we are able to resolve the substance of the complaint, type E10 will generally not be appropriate where we consider that our investigation provides closure.

E10 case example:

Mrs B complained about [redacted] NHS Foundation Trust's (the Trust's) treatment of her late husband, Mr B, following his liver transplant in February 2004. Mrs B believed the errors in her husband's treatment meant that he was not given a 'fighting chance' of survival. Mrs B told us she was angry that making a complaint to the Trust did not lead to her finding out what went wrong and why. We found that the medical care provided for Mr B by the Trust fell significantly below the applicable standard. This removed Mr B's 'fighting chance' of survival. We also found maladministration in the way the Trust responded to the Healthcare Commission's recommendations. We found that had the Trust's explanations in response to the Healthcare Commission's recommendations been honest

and evidence-based, it would have had to acknowledge that there had been errors in the medication given to Mr B and that these errors affected his survival chances. This service failure and maladministration by the Trust contributed to the injustice of Mrs B's anger and her being unable to move on from her husband's death. In December 2010, we recommended that the Trust make a payment of £1,000 to Mrs B as compensation for the injustice she suffered.

E11: Financial worry

This injustice arises when maladministration or service failure gives rise to significant financial concerns which go beyond short term shortages of money, for example, inability to pay a mortgage for a sustained period, or concerns over the viability of a business.

E11 case example:

PA 90384 - Ms S complained that the Office for Standards in Education, Children's Services and Skills (Ofsted) failed to provide a suitable remedy to her complaint. Ofsted's maladministration meant that an unsafe inspection report was available on their website for six days. Following the publication of the report the number of children Ms S recruited to her Nursery dropped substantially. We found that had Ofsted not published the unsafe report, Ms S' complaint and Ofsted's concerns about the judgments in the report could have been resolved in private. We found that this caused a financial loss to Ms S' business (injustice type M1). We also found that Ms S suffered considerable stress and anxiety as a result of the financial impact on her business. Ms S had the additional worry of whether or not she would be able to afford to pay her staff during the period when registration was falling. She used her personal savings and borrowed from her sister to keep the Nursery afloat. This exacerbated the stress and anxiety Ms S was already experiencing. In November 2011, we recommended that Ofsted make a consolatory payment of £1,000 to remedy the stress, anxiety, embarrassment and frustration caused their maladministration caused. We also recommended that Ofsted pay Ms S the business losses she incurred.

E12: Disempowerment

This injustice arises when the actions of a body have left the aggrieved in a position where they feel powerless to influence the outcome either for themselves or for a dependent. Typically, this occurs where the aggrieved makes valid representations to the body concerned which are either not listened to or not acted upon, giving rise to a feeling of powerlessness. It may also occur where family members complain that they were not listened to or kept informed about the care being provided to a vulnerable patient in a hospital or care setting.

E12 case example:

Mr D's complained about NHS Brent's (the PCT's) refusal to provide him with information about his children's GP, and the way in which his complaint was handled. Mr D said that he has been frustrated and distressed by the PCT's refusal to supply the information and subsequent delays in the complaint handling process. He also said that his children had been denied appropriate healthcare and that he has been prevented from taking action to address this by the PCT's delay in releasing information to him. We found that the way in which the PCT responded to Mr D's request, and the way in which it handled his subsequent complaint, fell so far short of the applicable standard as to amount to maladministration. We found that the prolonged delays in providing information and responding to his complaint left Mr D feeling unable to participate in decisions about his children's healthcare and this has caused him frustration and distress. In September 2011, we recommended that the PCT pay Mr D the sum of £250 as compensation for the frustration and distress caused to him as a result of the maladministration we identified.

E13: Loss (or sale) of item of significant personal or sentimental value

This injustice arises where, as a consequence of maladministration or service failure, the aggrieved loses an item of significant personal or sentimental value. Generally this will be an irreplaceable item such as a wedding ring. The loss may either be direct - for example, where possessions go missing during a stay in hospital; or indirectly, for example, where financial hardship means that the item needs to be sold. This injustice is separate to any financial loss that may arise - for example, the value of the item. However, it is not necessary for the item to have a significant financial value.

Category M: Material injustice

Definitions of injustice category and types

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Category M: Definition

Material injustice is any tangible material impact on the aggrieved in consequence of maladministration or service failure, excluding financial loss, which is considered separately (see below). This includes any loss or other material impact, including reasonable expectations, loss of opportunity, material uncertainty, or additional time and effort. It also includes loss of rights, insofar as the right is established in law, policy or accepted good practice.

Injustice types involving financial loss have been removed from the Typology, which is intended mainly at capturing non-financial injustices. Where we are satisfied that the loss is financial – that is that the aggrieved has lost a sum of money (either precise or estimated) then we should consider this separately and where appropriate, recommend compensation for any financial loss that we are satisfied was in consequence of fault, together with payment of interest where appropriate. In these

circumstances the material injustice arising from the loss will usually be resolved in full (although there may be other aspects to the injustice which is not related to financial loss).

M1: Not in use

This injustice type was removed from the Typology as part of the 2015 Typology of Injustice review.

M2: Not in use

This injustice type was removed from the Typology as part of the 2015 Typology of Injustice review.

M3: Inconvenience or additional time and trouble

This injustice type equates to the 'inconvenience' element of our considerations of distress and inconvenience. This may involve any significant diversion of the aggrieved's time which arose in consequence of maladministration or service failure. Often this will relate to the extent to which the aggrieved has had to unreasonably spend time and effort pursuing the matter complained about, including action under complaints procedures where the body initially fails to give a properly considered response.

However, we should bear in mind that just about every complaint we consider will involve an element of inconvenience; it may not be appropriate to record this injustice in every case, particularly where it forms a relatively small part of the total injustice.

M3 case example:

Mrs F complained that her GP denied her request for a referral letter for fertility investigations at [redacted] Hospital. She was also unhappy about the way the GP dealt with her complaint. Our investigation found that the GP did not take appropriate steps to ensure he was properly informed about guidance with regard to NHS fertility investigations for someone in Mrs F's position and consequently gave incorrect information. This meant that the GP failed help Mrs F obtain the referral she was entitled to. Therefore, Mrs F had the inconvenience of changing her GP to access a service she was entitled to. We also found that the tone and language of the GP's response caused some distress (injustice type E1), and made Mrs F feel that her needs were not being given appropriate consideration. In March 2012, we recommended that the GP pay Mrs F £500 in tangible recognition of the injustices of distress and inconvenience suffered.

M4: Hardship/privation

This injustice reflects the tangible material impacts of the absence of money, food, shelter, basic amenities or means of support, where we consider that the aggrieved would have had access to these but for fault.

M4 case example:

Mr Y complained about the UK Border Agency's (UKBA's) refusal to compensate him for actual financial loss, and for the inconvenience and stress, caused by their failure to follow their accepted practice when they considered his application for asylum. Mr Y said that, in the period when he did not receive any asylum support (approximately one year), he survived by borrowing money from friends, by going to charities that assisted asylum seekers and by staying with friends. UKBA had already admitted that they failed to handle Mr Y's asylum application properly. Our investigation found that, by not financially compensating Mr Y for the injustice he suffered as a result of their failings, UKBA failed to 'put things right'. We were persuaded that, over a period of four years, UKBA deprived Mr Y of the opportunity to attempt to obtain employment or claim benefits (injustice type M9), and limited his opportunities to education (injustice type M5). We were also persuaded that, over a period of one year, following the cessation of his National Asylum Support Service payments, Mr Y experienced significant hardship, during which time he was relying on asylum seekers' charities and borrowing money from friends. In January 2012, we recommended that the UKBA should make a payment of £5,000 to Mr Y in recognition of the injustice he suffered.

M5: Loss of material opportunity

This injustice type involves the loss of any tangible material opportunity where the loss is a consequence of maladministration or service failure. Generally the lost opportunity will have a value which either cannot be measured directly in financial terms (for example, attending university, or receiving IVF treatment); or where we cannot say with certainty that the material gain would have arisen or what it would have been worth (for example, loss of opportunity to work, or to secure child support maintenance). Loss in this sense could also include significant delay in securing the opportunity, rather than a permanent loss. However such cases will be rare.

M5 case example:

Miss W complained that the UK Border Agency (UKBA) delayed in granting her indefinite leave to remain because they confused her with her half sister. As a result, she was unable to accept an internship that she had been offered and lost out on subsequent earnings and work experience, as well as the opportunity of this internship being on her CV. We found that that UKBA's decision to change Miss W's details on their computer system was based on an incorrect assumption about information provided by a third party. We also found that the UKBA failed to take full responsibility for resolving their error and further exacerbated matters with their poor

complaint handling. As a consequence of UKBA's maladministration, the opportunity for Miss W to undertake a summer internship was delayed by a year, effectively delaying the development of her career by that same period. We also found that UKBA's mistakes caused Miss W upset, frustration and stress (injustice type E1). In January 2012, we recommended that UKBA pay Miss W £1,000. This figure recognised that, although Miss W did eventually undertake an internship, was subsequently offered a full-time position with the employer and was doing a Masters degree from which she may expect to benefit in the future, her career was 'put on hold' by UKBA's mistakes.

M6: Tangible loss of quality of life

This injustice occurs where, in consequence of service failure or maladministration, the aggrieved suffers a significant deterioration in her or his quality of life. This may arise in various ways, which may or may not be considered as a separate injustice. Examples may include failure to provide an essential support service, or loss of independence arising from the consequences of disability.

M6 case example:

Mrs G complained about the use of haloperidol for her father, Mr N, whilst he was an inpatient at [redacted] NHS Trust (the Trust) in October 2008. Mrs G said that as a consequence of the use of haloperidol, her father fell whilst in hospital. Mrs G said that before her father had been given haloperidol, he was able to walk around the hospital ward and feed himself. However, after being given haloperidol and suffering three falls in hospital, he has not been able to walk or eat unaided since. She also said he does not use his right arm and suffers from neck and right shoulder pain. She said he has lost his confidence and what little mobility and independence he had. Mrs G also told us that her father had been placed in a nursing home as he requires one-to-one care. Our investigation found that the Trust inappropriately prescribed haloperidol to Mr N whilst he was an inpatient at the Trust. We found that that the prescription of haloperidol was likely to have contributed to Mr N's decreased mobility and the three falls he sustained. We also found that it very likely that Mr N's experience in hospital has contributed to his ongoing fear of falling. In August 2010, we recommended that the Trust provide Mr N and his family with compensation of £2,000.

M7: Adverse impact on family relationships

This injustice involves significant detrimental impact on the aggrieved's relationship with her or his partner, or with another close family member. Typical examples may be marital difficulties; divorce or separation; domestic disputes; or loss of contact with parents, children or siblings.

M7 case examples:

Mr U complained that the Child Support Agency (the CSA) had incorrectly identified him as a non-resident parent and had continued to send him correspondence, even though they had acknowledged their error. We investigated the complaint and found that the CSA failed to 'get it right' when they incorrectly identified Mr U as the non-resident parent. Despite realising this error they did not amend their records, which resulted in the Agency wrongly sending Mr U a maintenance enquiry form; making a maintenance calculation; and asking Jobcentre Plus to deduct money from his benefit. Although we were unable to say that the CSA's actions were the sole reason for the breakdown of Mr U's marriage and relationship with his children, Mr and Mrs U gave us compelling testimony about the devastating effect it had had on them. We therefore concluded that the CSA's maladministration greatly strained his relationship with his family, and caused them a tremendous amount of worry (injustice type E2), distress, aggravation and inconvenience (injustice type M3). The feeling that Mr U had lost the trust and respect of his family would have caused him emotional and psychological difficulties, while his powerlessness to prevent the CSA's intrusion into his life would have caused further aggravation, worry and distress. All of this affected his mental health and worsened his depression (injustice type P3). In October 2009, we recommended that the CSA pay a further £9,650 to Mr U (they had already paid him £350).

M8: Service provision without reference to statutory or other rights or adjustments

This injustice occurs where we find that the standard of service provided to the aggrieved was diminished in consequence of a failure to have regard to statutory requirements, or to rights established in relevant public policy, either aimed at reducing discrimination of any sort or at ensuring that certain rights are respected. It may also arise where religious or cultural needs are not taken into account. The material loss may relate to the provision of a poorer standard of service arising from the failure to have regard to rights. Alternatively it may come from the loss of the right itself. Any wider impact of the fault giving rise to this injustice, for example worsened health, should be recorded separately, as should any related emotional injustice.

M8 case example:

Mrs W complained about a number of aspects of the care and treatment her daughter received during her stay in [redacted] NHS Trust (the Trust). This included her complaint that nurses did not take account of her daughter's learning disabilities. Our investigation found that that the Trust's communication with Miss W and her family, and its care and treatment of her, fell so far below the applicable standard that it amounted to service failure. We found that in planning and then providing care to Miss W, the Trust did not have regard to its obligations to her under disability

discrimination law. Her legal rights were not properly considered by the Trust and if they had been, her care and treatment might have been better planned and delivered. Because of the lack of care Miss W was shown during her stay in the Hospital, she suffered distress (injustice type E2), and Mrs W and her husband became increasingly worried (injustice type E3). In September 2011, we recommended that the Trust pay Miss W and Mrs W the sum of £2,500 (£2,000 to remedy the injustice arising from the service failure and £500 to remedy the injustice arising from the maladministration).

M9: Loss of entitlement to material benefit

This injustice type was first identified in the *Defending the Indefensible* case . It will arise primarily where, due to maladministration the aggrieved is wholly denied access to some material benefit to which they would otherwise may have had entitlement. The main defining factor is that entitlement has been lost or denied. (If the entitlement has remained but has not been properly acted upon, injustice type M1 would be appropriate.) Almost all of the cases that have arisen since TOI was implemented involve 'compensation scheme' cases, where the organisation denied that the aggrieved had an entitlement under the scheme).

M9 case example:

Mr A complained, on behalf of himself and four of his siblings, that the Ministry of Defence (the MoD) and its executive agency, the Service Personnel and Veterans Agency (the Agency) were maladministrative in refusing him and his siblings a £4,000 payment to recognise the injury caused to their feelings by the rejection in 2001 of their applications for the £10,000 payment under the ex gratia scheme for British groups interned by the Japanese during the Second World War. We found that the injury to feelings scheme was fundamentally flawed from the outset. They were incorrectly refused the payment under the injury to feelings scheme, a scheme which was devised to recognise the unlawful indirect race discrimination to which all of them were subject. The way the MoD and the Agency rejected these claims exacerbated their anguish and suffering (injustice type E4). In August 2011, we recommended that MOD pay each of Mr A's siblings and Mrs A, on behalf of Mr A, the £4,000 'injury to feelings', plus interest. To recognise the considerable injustice that Mr A and his siblings have suffered as a result of the MoD's and the Agency's maladministration, we also recommended that the MoD make consolatory payments to Mrs A on Mr A's behalf and to Mr A's siblings of £5,000 each.

M10: Material uncertainty relating to immigration status, tax status or similar

This injustice comes from the consideration that the aggrieved has a reasonable expectation that her or his status will be determined accurately

and within a reasonable timescale. Generally, the injustice will arise either because the body has delayed or failed to make a decision about some aspect of the aggrieved's status, or has determined that status incorrectly. Delayed determination may result in the aggrieved not being able to make plans or decisions in matters where the status is a relevant factor. Incorrect determination means that the aggrieved may well make incorrect decisions. Both of these may in turn lead to further injustice.

The most commonly seen examples relate to immigration status and tax coding. Uncertainty in these areas means that the aggrieved is in effect limited in the scope to make future plans.

It has also arisen recently on a continuing healthcare case, where maladministration by the relevant CCG left the aggrieved in the position of not knowing what her entitlement was for a considerable period.

M10 case example:

Mr J complained that following an upheld appeal, there was a long delay in the UK Border Agency (UKBA) processing his papers; and UKBA then endorsed his passport with a student visa instead of a working visa. Mr J complained that there was then a further lengthy delay in correcting that mistake, which meant that he was issued with a Tier 1 General Migrant Visa (Tier 1) rather than a Highly Skilled Migrant Programme (HSMP). We found that UKBA's administrative faults were so far short of the overall standard that they amount to maladministration. This meant that the process of obtaining a visa and entry clearance to the UK was prolonged, further exacerbated by a long delay when he brought the incorrect visa to UKBA's attention in the UK. We found that this caused the family frustration and inconvenience (injustice type E2). We also found that as Mr J was issued with a Tier 1 visa, he would only be able to apply for an extension for only two years rather than the three available to HSMP applicants. Our investigation also found that because of UKBA's mistakes Mr J would have to wait almost ten months longer than he would otherwise have done to make an application for indefinite leave to remain in the UK. In January 2011, we recommended that UKBA should write to Mr J to confirm they will consider a three year extension on renewal of his visa; set out clearly the conditions under which his extension will be considered; and confirm that - subject to his meeting the other qualifying conditions - they will accept an application for indefinite leave to remain in the UK from Mr J on 20 January 2014. We also recommended that UKBA pay Mr J £250 in recognition of the frustration and inconvenience they have caused him and his family as a result of their maladministration.

M11: Not in use

This injustice type was removed from the Typology as part of the 2015 Typology of Injustice review.

M12: Loss of opportunity to make an informed choice

This injustice arises in any situation where a public body fails to give the aggrieved the opportunity to exercise a choice in a situation where there is an expectation or requirement that they should do so; where the information given to the aggrieved on which she or he bases a significant choice is inadequate or incorrect; or where the process followed by the public body is flawed in a way that influences the choice made. Frequently occurring examples include issues around clinical consent, and the provision of incorrect pension forecasts.

M13: Loss of opportunity to exercise a right

This injustice occurs where, as a result of maladministration, the aggrieved loses the opportunity to exercise a right. This will usually be a time-limited right - for example, the right to submit an appeal or a benefit claim.

M13 case example:

Mr D complained that the Equality and Human Rights Commission (the Commission) failed to provide him with appropriate information when he contacted their helpline and as a result he lost the opportunity to pursue legal action and to obtain compensation for the discrimination he experienced. We found that the Commission failed to advise Mr D about court time frames and the need to give the Commission at least six weeks to decide if they will assist them. In addition, the Commission failed to tell Mr D that even though he was out of time, he could have made an application to the court for an out of time application based on exceptional circumstances. These failings meant Mr D lost the opportunity to have the Commission arrange conciliation of his matter, as well as the opportunity to take the matter to court, either with the potential support of the Commission or to obtain legal advice and pursue the matter himself. We also found that the Commission's errors caused Mr D anger and distress (injustice type E1). In January 2011, to recognise Mr D's lost opportunities to pursue his matter through conciliation or legal action, the uncertainty he is was left with, and the distress and anger this caused him, we recommended the Commission pay Mr D £250.

M14: Incarceration or loss of liberty

This injustice occurs where the aggrieved's liberty is removed, withdrawn or impeded as a result of the actions of a public body. This may involve arrest and custody, but could also involve detention under the *Mental Health Act*, failure to release a prisoner on parole, or inappropriate electronic tagging. This injustice may also arise where there is no actual incarceration but where the aggrieved is coerced into accepting loss of liberty, for example by threats of detention under the Mental Health Act 1983.

M14 case example:

Mr W complained that he was wrongly tagged by [redacted] (the service provider - on behalf of the Ministry of Justice) following his release from prison. He complained that HM Courts and Tribunals Service (HMCTS) and the Ministry of Justice did not advise the service provider appropriately. We found that HMCTS failed to make sure the information they provided the service provider about Mr W was clear, accurate and complete. We found the service provider's failure to attempt to gather more information about the outcome of Mr W's bail hearing was a serious shortfall against the Principle of 'Acting fairly and proportionately', because they failed to ensure their actions were proportionate, appropriate and fair. We also found that it was unacceptable that HMCTS were unable to give the service provider accurate information about Mr W's status. Our investigation found that these failings meant that Mr W had the intrusion and inconvenience (injustice type M3) of being electronically monitored for a curfew period that did not exist. Secondly, he suffered the inconvenience and frustration of going through a complaints process that failed to deliver an appropriate remedy. In February 2012, we recommended that that HMCTS and the service provider make arrangements to pay Mr W a total of £500 (between them) by way of apology for the effect on him of the maladministration we identified.

M15: Not in use

This injustice type was removed from the Typology as part of the 2015 Typology of Injustice review.

M16: Loss of opportunity to fully resolve complaint

This injustice arises where, usually as a result of extensive delay or lost or incomplete records, there no longer remains any prospect of a resolving a complaint in the sense that action by PHSO is unable to identify what went wrong and therefore unable to recommend any action that will 'put it right'. This represents a real material loss to the aggrieved insofar as we consider that they have a right to have their complaint resolved.

M16 case example:

Mrs Y complained that [redacted] NHS Foundation Trust (the Trust) had been unable to explain the process by which a decision was made to refer her son to a counsellor when his GP had referred him for assessment by a specialist alcohol nurse. Mrs Y wanted the Trust to be 'fully accountable for a satisfactory explanation as to why an assessment was not carried out'. Our investigation found that the Trust had not been 'customer focused' in their explanation of the process by which the decision was made to refer Mr Y to a counsellor. We also found that the Trust's handling of this element of Mrs

Y's complaint had neither been 'fair and proportionate' nor 'open and accountable'. The issue was not dealt with thoroughly at the outset and Mrs Y has not been provided with an honest, evidence based explanation. We concluded that that a more thorough, honest review by the Trust had the potential to answer Mrs Y's questions much earlier, reducing the distress and the inconvenience of pursuing her complaint for a considerable period of time. Unfortunately, the Trust had to admit that they were not able to provide any written information about the decision. In addition to the distress Mrs Y has suffered, she is still left with unanswered questions. In February 2012, we recommended that the Trust pay financial compensation to Mrs Y of £500, in tangible recognition of the injustices of distress and inconvenience suffered by her over an extended period of time.

M17: Complaint not addressed or investigated adequately

This injustice is based on our belief that there is an underlying right to full and reasonably prompt resolution to a complaint. This right is derived from assertions in official documents such as the NHS Constitution and organisations' published complaints policies, as well as underlying the provisions of the PCA (1967) and HSC (1992) Acts which state that the Ombudsman will only investigate a complaint once the organisation concerned has had the opportunity to respond to the complaint. Where this right is not fulfilled, either because the body fails to provide an adequate complaint response or delays unreasonably in doing so, that represents a material loss to the aggrieved. Failure to resolve a complaint includes failure to provide an appropriate remedy. Generally where we record this injustice type it will not be necessary to record distress or frustration (type E1) or inconvenience (type M3) arising from poor complaint handling except where we consider that the impact on the aggrieved was unusually severe. NB we should not record M17 where we are recording B5 (Bereavement exacerbated by poor complaint handling) except where the complaint concerns some matters which are wholly unrelated to the bereavement.

M17 case example:

Mrs E complained about the [redacted] NHS Trust's (the Trust's) failure to provide appropriate remedy for the acknowledged failures in care provided to her father. Mrs E said that as a result, she had been caused distress by the 'inefficient and inconsiderate attitude' the Trust displayed when dealing with her complaint. She told us that she endured sleepless nights, distress, upset, worry and concern. Our investigation found that the Trust failed to provide appropriate remedy with regard to acknowledged failures in service they provided Mrs E's father. We concluded that this would likely have caused distress, upset, worry and concern and made her feel that the Trust was not interested in her complaint. This was compounded by the errors contained in the Trust's final written response to her. Mrs E was caused further concern by the Trust's failure to reassure her that the lessons learnt from the complaint would prevent a recurrence of the admitted failings. In October 2011, we recommended that the Trust provide Mrs E with a sum of £500 as compensation for the injustice she suffered.

M18: Family/friends of patient left to provide care without support

This injustice will generally arise where a health body has failed to provide care that they either had a duty to provide, or where there was an agreed need for that care, which then falls to the patient's family to provide.

NB where the family make alternative arrangements for care, the cost of doing so should generally be recorded as a separate injustice in the form of additional expense. Where the family provide care themselves, we should recognise that this will impact on their ability to live a relatively normal life. In exceptional circumstances it may be appropriate to recommend compensation equivalent to the value of the care that should have been provided.

M18 case example:

Mrs P complained about the delay in [redacted] (the PCT) agreeing to fund respite care for her daughters. She also complained about the amount of compensation offered to her by the PCT for the period that her daughters should have been receiving funding for their care. Our investigation found service failure with regard to the delay in implementing care packages for Mrs P's daughters. We concluded that the PCT had not adequately 'put things right' by providing a remedy that recognised the injustice Mrs P and her family suffered. Mrs P was deprived of the skilled help she needed and of the opportunity to take a break from the stress of caring for her daughters on her own. Mrs P also described the cost in terms of the distress caused to her and her family by not having the assistance she so required over a period of more than four years. In February 2012, we recommended that the PCT 'fill' the remedy gap but providing Mrs P with a sum of money equal to the cost of the relevant respite care that the PCT should have provided. We calculated that the cost of this limited support would have amounted to a sum between £37,982 and £46,382.

M19: Material disadvantage

This injustice type arises where maladministration or service failure places the aggrieved at a tangible disadvantage. Typically this will be in situations where there was an adverse outcome for the aggrieved which we cannot say was in consequence of fault, but where the fault may have made the adverse outcome more likely. It was initially recorded in a case where, due to maladministration, a complainant's opponent in a court case received legal aid to which she was not entitled, leaving the opponent at a significant disadvantage in the court proceedings.

M19 case example:

Mr O complained that the Legal Services Commission (the Commission) inappropriately awarded legal aid to his opponent, Mrs T, and thereafter failed to monitor the case. Mr O said that the Commission's actions prolonged the proceedings and caused him financial loss because he was not able to recover his costs from Mrs T, due to the costs protection afforded to her because she was in receipt of legal aid. Our investigation concluded that as a result of the Commission's maladministration, from 10 January 2001 onwards, Mr O unnecessarily faced a funded opponent, from whom he was thereafter unable to recover his costs. We found that, had it not been for the Commission's maladministration, it was likely that Mr O would have been able to recover some or all of the costs for the period prior to January 2001 as well as the costs arising after that date. This being so, the Commission, through the Appeals Committees, should have identified that Mr O was unable to recover significant costs as a result of their maladministration, calculated what these costs were, and offered appropriate redress. However, due to the Commission's abject failure to do that, Mr O had no genuine option other than to engage in further legal action to try to recover the costs. In November 2011, we recommended that Commission s pay Mr O's legal costs. We also recommended that the Commission pay Mr O a sum of £5,000 as a tangible recognition of that distress and in recognition that they have been unable to use the monies they spent on legal fees.

M20: Damage to reputation

This injustice type arises where the actions of a public body either cause or contribute to the dissemination to third parties of information about the aggrieved which is either untrue, or which should not otherwise have been released, and which is prejudicial to the aggrieved. This may include the investigation of false or unfounded accusations

M20 case example:

Mr L complained that the General Social Care Council (GSCC) failed to complete their preliminary enquiries within a reasonable time span and that at the end of their enquiries they reached an 'ambiguous and pejorative conclusion' such that there was no real prospect of finding misconduct. Mr L said that the delay caused him to suffer distress and anxiety as he was unable to apply for suitable employment whilst enquires were ongoing. Mr L also said that GSCC's finding undermined his confidence going forward and reduced the likelihood of being asked for interview. Our investigation found that Mr L should have received a different reason for the decision that would have cleared his name, 19 months earlier than he did. While we accepted that Mr L's confidence would have been adversely affected and that would not have helped his job search, we could not say that, but for the maladministration, he would have found employment at a senior level. We did find Mr L suffered unnecessary stress, worry and uncertainty for 19 months as a result of GSCC's maladministration. We also found that Mr L has suffered unnecessary hurt and damage to his reputation after being misled

about the GSCC's findings, which added to his stress and anxiety. In January 2011, we recommended that GSCC make him a consolatory payment of £5,000 in recognition of the anxiety, stress and worry caused by the failings we identified.

M21: Not in use

This injustice type was removed from the Typology as part of the 2015 Typology of Injustice review.

M22: Inappropriate removal from or refusal of admission to the United Kingdom

This self-explanatory injustice type arises where an organisation responsible for immigration control refuses entry to the UK, or carries out a removal from the UK, in circumstances where we find that the decision to do so was maladministrative. This injustice type encompasses the resultant inconvenience to the aggrieved and any adverse entry on their immigration record. However, any other injustice, such as financial loss, distress, etc, should be recorded as a separate injustice type.

M22 case example:

PA-113038 - Mr M and Ms L complained about the way the UK Border Agency (UKBA) reached their decision to refuse Ms L entry to the UK on 29 December 2010, and also UKBA's handling of Mr M's subsequent complaint. Mr M said that as a result of UKBA's decision he and his family were distressed and upset, were denied the help they needed when their new child was born, and were denied Ms L's company. We found that the reasons given by UKBA to refuse entry to Ms L were not supported by properly substantiated facts, nor were there sufficiently robust grounds for the opinions reached by UKBA. We also found that UKBA failed to acknowledge their mistakes meaning that they missed the opportunity to 'put things right'. By making a decision that was not supported by the evidence available, Mr M incurred the expense of a wasted return flight from Argentina (injustice type M2). The refusal had also been added to Ms L's immigration history, which may affect her in the future. We concluded that the refusal caused Mr M and his family, and Ms L, unnecessary distress and inconvenience (injustice type E1), particularly given that Ms L was denied the chance to be with her family at an important family event (injustice type E5). In February 2012, we recommended that UKBA make Mr M a payment of £500, and Ms L a payment of £500, in recognition of the distress and inconvenience caused by UKBA's maladministration. We also recommended that UKBA reimburse Mr M for the amount spent on Ms L's aeroplane ticket.

Category P: Physiological injustice

Definitions of injustice categories and types

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Category P: Definition

These injustice types describe the impact of maladministration or service failure on the aggrieved's physical wellbeing or mental health. They include all aspects of pain, injury and illness, and any worsening (or worsened prognosis) of the aggrieved's physical or mental health.

P1: Minor pain/injury/harm/illness

This injustice arises where the aggrieved suffers a relatively minor or short term pain or physical harm as a consequence of maladministration or service failure. Minor in this context means conditions which are neither life threatening nor permanently debilitating, where the aggrieved was able to continue with a relatively normal life, albeit with some temporary discomfort and/or limited functions, before making a complete recovery. This may include conditions necessitating short periods of absence from work, as well as short periods of more serious illness where a full recovery has occurred, including short-term hospital inpatient treatment.

This injustice type must be differentiated from serious pain, illness or injury; as defined in injustice type P2.

P1 case example:

Mrs V complained about the delay in her receiving vertebroplasty treatment at [redacted] NHS Foundation Trust (the Trust) following her referral there by her GP. Mrs V told us that her back pain had ruined her life. She had returned to work as a cleaner but was only able to do light work. She said she could not run, cycle or swim as she often used to. She also told us she was in constant pain and was having counselling to help her try to cope. Our investigation found that the care provided for Mrs V by the Trust fell significantly below the applicable standard. This service failure meant that Mrs V was left without the benefit of reduced pain from the vertebroplasty procedure for a period of about a year. In June 2010, we recommended that the Trust make a payment of £1,000 to Mrs V as compensation for the injustice we identified.

P2: Serious pain/injury/harm/illness

This injustice type arises where the aggrieved suffers, as a consequence of service failure or maladministration, any serious illness, pain or harm. Serious in this context means that the aggrieved is unable to lead a relatively normal life. This may include all life-threatening or permanently debilitating conditions, as well as conditions involving inpatient treatment for more than a few days, extended outpatient treatment, and long-term significant pain. Where the condition is permanently debilitating we should also consider whether injustice type P7 is appropriate.

This injustice type also includes permanent or long-term damage to health.

This injustice type must be differentiated from minor pain, illness or injury, as defined in injustice type P1.

P2 case examples:

Mrs D complained that the actions of staff at [redacted] NHS Trust (the Trust) led to the development of pressure sores. She also complained that the Trust did not adequately address the failings she complained about. Mrs D said that her general health had suffered after she developed the pressure sores. She told us that she suffered severe discomfort for about a year and required daily nursing care from the district nurse. She said she had been unable to wear shoes for about eight months until the sores on her heels healed. She also said that she eventually had to undergo plastic surgery. Our investigation found that the actions of Trust staff with regard to Mrs D's mobility fell significantly below the applicable standard. This was service failure, which was compounded by maladministration with regard to the handling of Mrs D's complaint. This service failure and maladministration contributed to the injustice to Mrs D of being placed at unnecessary risk of developing the pressure ulcers that in the event required a prolonged period of district nursing care, caused severe pain, discomfort and decreased

mobility, and eventually required surgery. It also resulted in the injustice to Mrs D of unnecessary distress (injustice type E1) and what she described as a degrading and humiliating experience. In November 2010, we recommended that the Trust pay Mrs D the sum of £4,000 by way of financial redress for the pain, discomfort and distress caused to her by the service failure and maladministration we identified.

P3: Psychological harm and mental illness

This injustice involves any occurrence of psychological harm or mental illness arising in consequence of service failure or maladministration. We would usually expect to see a clinical diagnosis. This injustice may be in the form of a new illness, or it may also be relevant where a pre-existing mental health condition is worsened or recurs. This may include stress-related conditions. However, where there is no clinical diagnosis to support the claimed stress, and no other supporting evidence, it may be more appropriate to use injustice type E1 (distress).

P3 case example

Miss T complained about the care and treatment that she received from [redacted] NHS Foundation Trust (the Trust). She said she was denied access to a consultant psychiatrist for several months. She also said there were delays in providing her with a diagnosis and then treating her illness. Miss T described the treatment she received as 'devastating' for her health and felt that her illness was unnecessarily prolonged. She said she was 'left in a state of bewilderment, with no diagnosis, no prognosis and no advice'. Our investigation found that the Trust failed to provide appropriate assessments and treatment to Miss T between September 2006 and October 2008. In this respect the actions of the Trust fell significantly below the applicable standards. This service failure led to the injustice that Miss T suffered unnecessarily with the symptoms of her illness for a prolonged period and was distressed at not being able to see a consultant. She also suffered 'bewilderment' and additional distress (injustice type E2) because of failings in communication. In January 2012, we recommended that the Trust pay Miss T compensation of £1,000 for the injustice she suffered.

P4: Loss of opportunity for better health outcome/chance of recovery; worsened prognosis

This injustice type will usually take one of the following forms:

- The aggrieved has suffered ill health which we cannot conclude was in consequence of fault, but is left in the position of not knowing whether a better clinical outcome, for example a shorter or less severe illness, or a faster or more complete recovery, may have been possible if no fault had occurred.

- There is some possibility that, following fault, the aggrieved's prognosis may have been worsened but it is not clinically possible to say whether or to what extent that is the case.

P4 case examples:

Mr A complained that he had an unreasonably long wait for an operation at [redacted] NHS Trust (the Trust). Mr A said that the delay in his operation caused his condition to deteriorate. He told us that his distress about this has been compounded by the Trust's failure to provide a full and timely explanation for the poor care he received. Our investigation found that the actions of the Trust in delaying Mr A's operation fell significantly below the applicable standards. This service failure by the Trust led to the injustice of Mr A's condition deteriorating while he waited for his operation and might have significantly affected his prognosis. We found that if surgery had been performed earlier there was a 30 to 40 per cent chance that he would not now be confined to a wheelchair. We also found that The Trust missed an opportunity to operate earlier than they did. Although we will never know for certain if an earlier operation might have avoided Mr A's paraplegia, the delay allowed his condition to deteriorate. This had a significant impact on his everyday life, adversely affecting his mobility and ability to urinate. In August 2010, we recommended that the Trust offer financial redress of £5,000 to Mr A for the injustice he suffered as a result of the delayed operation and for the distress suffered as a result of their poor complaint handling.

P5: Not in use

This injustice type was removed from the Typology as part of the 2015 Typology of Injustice review.

P6: Damage to fertility or ability to start a family

This self-explanatory injustice type arises in any situation where, in consequence of service failure, the aggrieved's fertility is damaged or she is otherwise unable to start a family (or have further children). This may be as a result of the mental or emotional impact of service failure as well as the direct physical impact.

P6 case example:

Mrs T complained that (the service provider) failed to detect her ectopic pregnancy. She complained that as a result she underwent an unnecessary termination procedure and subsequently received emergency treatment a ruptured ectopic pregnancy. Mrs T also complains that [redacted] NHS Foundation Trust (the Trust) delayed in diagnosing her ectopic pregnancy. Mrs T said that as a result of her experience she has been affected

physically, mentally and emotionally. She also said that she suffered financially, as she had to take six weeks' unpaid leave from work. Her emergency surgery resulted in the loss of one of her fallopian tubes and she said she is now fearful of having more children, even though she was keen to have more. Our investigation found that the care and treatment provided for Mrs T by the service provider and the Trust fell far below the applicable standard. We found that had this service failure not occurred, Mrs T's ectopic pregnancy would have been detected and she would not have suffered the traumatic rupture of her fallopian tube (injustice type P2). This contributed to the injustice of physical, mental and emotional distress and suffering for Mrs T and it contributed to financial loss for her. We concluded that the experience Mrs T had would have contributed to her feelings of apprehension about having more children and that the loss of one of her fallopian tubes would also have an impact upon this. In November 2011, we recommended that the service provider pay Mrs T £15,000, and that the Trust pay £5,000 as compensation for the physical, emotional and mental injustice she has suffered, and as acknowledgement that she felt unable to work for some time.

P7: Permanent disability, disfigurement or loss of body part.

This injustice occurs in all cases where, as a result of service failure, there is some permanent and adverse change to the aggrieved person's body. This may extend from minor scarring or the avoidable loss of a tooth or teeth, to significant disabilities or loss of limbs. In more serious cases we should consider whether it is appropriate to make reference to the Judicial Studies Board's published *Guidelines on the assessment of general damages in personal injury cases*.

P7 case example:

Miss P complained that delays by [redacted] NHS Trust (the Trust) in arranging investigations and treatment for her mother, and problems with an angiogram, may have led to her mother having to have the lower part of her left leg amputated. Miss P was also concerned that a below the knee amputation was not attempted. Miss P said that her mother's life had changed for the worse as a result of the amputation. This left the family to pick up the emotional and financial costs of what went wrong. Our investigation found that the actions of the Trust fell significantly below applicable standards and established good practice. This service failure led to the injustice of Mrs P having to undergo an amputation that could probably have been avoided with more timely and effective intervention by the Trust. We also found that Trust staff failed to facilitate Mrs P's and her family's request to see the X-rays and obtain a second opinion prior to the amputation being carried out. In December 2010, we recommended that the Trust offer financial redress of £75,000 for the injustices that Mrs P suffered as a result of the service failure we identified.

P8: Unnecessary, avoidable or additional surgery or other treatment

This injustice type arises either where the aggrieved is subject to surgery that is not medically or clinically essential; is necessitated primarily as a consequence of other service failure; or where initial surgery is ineffective as a result of service failure, giving rise to a need for further surgery.

P8 case example:

Mrs G complained about the care and treatment she received from [redacted] NHS Foundation Trust (the Trust). Specifically, she complained that she underwent unnecessary chemotherapy. She said that as a result she suffered 'considerable mental distress' and cancelled a planned holiday in order to undergo chemotherapy. She also said that she and her husband took early retirement because she was led to believe that her cancer had advanced significantly, that she had little time left to live, and that she would need chemotherapy intermittently for the remainder of her life. Our investigation found that the prescription of chemotherapy amounted to a service failure because it was based on an inaccurate radiology report. We also found service failure in the continuation of chemotherapy treatment; the process of making the decision to continue did not involve the patient; and the continuation of chemotherapy did not serve her needs. The injustice to Mrs G was that she underwent unnecessary chemotherapy treatment, suffered some side effects and suffered 'considerable mental distress'. Mrs G also suffered financial losses (injustice type M1) as a result of the Trust's service failure; she cancelled a planned holiday in order to undergo chemotherapy, and took early retirement. In May 2011, we recommended that the Trust pay Mrs G £17,000 in recognition of the distress and inconvenience caused to her by undergoing unnecessary chemotherapy and suffering the attendant side effects and in recognition of the distress she and Mr [redacted] suffered as a result of being told, erroneously, that her cancer had advanced significantly. We also recommended that the Trust pay Mrs G 18,550 in recognition of the financial loss she incurred.

P9: Serious illness spreads to family members or friends

This injustice occurs where, as a result of failure to either diagnose a serious illness, or to take appropriate steps either to treat the illness or to isolate the patient, the illness spreads to others.

P9 case example:

Miss J complained about the care and treatment her mother, Mrs J, received from her GP Surgery (the Surgery) and [redacted] NHS Trust (the Trust). She was concerned about the Surgery's failure to make a timely diagnosis of her mother's tuberculosis (TB) and about the Trust's care and treatment of her mother. Our investigation found that the Surgery failed to make a timely referral of Mrs J to a specialist and did not reasonably act

upon her symptoms. We also found that the Trust incorrectly reported Mrs J's chest X-ray. We concluded that these failings contributed to the injustice of unnecessary distress and suffering for Mrs J, a delay in the diagnosis of her TB and her avoidable death (injustice type B1). We also found failings in the Surgery's and PCT's handling of the complaint. Our investigation also found that the J family suffered additional distress due to the fact that [other family members] have been infected with TB. Whilst we could not say whether earlier diagnosis and treatment of Mrs J's TB would have prevented this, we concluded that Mrs J's family were placed at a greater risk due to the failings by the Trust, and that risk has transpired. In December 2011, we recommended that the Surgery pay Miss J the sum of £15,000 in recognition of the distress caused by their failure to provide Mrs J with appropriate care and treatment, and for not providing Miss J with a reasonable response to her complaint. We also recommended that the Trust pay Miss J the sum of £2,500 in recognition of the distress caused by their failure to report Mrs J's chest X-ray appropriately.

P10: Extended convalescence time

This self-evident injustice occurs where, as a result of service failure, the aggrieved's convalescence or recovery time is significantly longer than would have otherwise been the case. It is differentiated from type P4, where the injustice arises from a worsened prognosis for the extent of recovery rather than the time taken to recover.

P10 case example:

Mrs Y complained about the treatment provided to her by [redacted] NHS Foundation Trust (the Trust). She complained that a consultant urologist failed to diagnose her kidney condition. Mrs Y believed that had she been correctly diagnosed and kept under review, she would not have had to undergo the traumatic events leading to the surgery to remove her kidney. Our investigation found that the consultant urologist failed to properly investigate Mrs Y's condition and to make a correct diagnosis. We concluded that it was likely that her condition would have been addressed earlier and would not have developed into the serious infection from which she suffered. The resulting pain (injustice type P2), distress and discomfort were injustices caused to Mrs Y. We also found that because of the complications experienced by Mrs Y due to the infection in her kidney causing complications, she was off work for two months more than usual. In February 2011, we recommended that the Trust pay Mrs Y £3,000 for the pain, suffering and inconvenience that she suffered as a result of the service failure we identified.

P11: Unplanned or unwanted pregnancy

This self-evident injustice type occurs in all cases where an unplanned or unwanted pregnancy arises and where we are satisfied that, but for service failure, the pregnancy would not have occurred; for example, a significant and avoidable failure in contraception. It may also arise where a pregnancy test is either misinterpreted or where the results are not communicated properly.

P11 case example:

Miss E complained about the care she received from her GP Practice. She said the Practice failed to inform her that she was pregnant, despite undergoing a pregnancy test at the Practice and seeing her GP on a number of occasions afterwards. By the time she was informed that she was pregnant, it was too late for her to consider a termination of her pregnancy. Our investigation found that the care provided to Miss E fell significantly below the applicable standards. The Practice did not 'get it right' and its failings in this respect were so serious as to constitute service failure. We found that the failings in the care provided by the Practice led to a significant amount of distress, anxiety and stress (injustice type E2) for Miss E. The Practice's failure to ensure that she was properly informed of her test results in line with established good practice or to note her pregnancy at subsequent consultations meant that she was not informed that she was pregnant in a timely way that left choices open to her. In January 2011, we recommended that the Practice pay Miss E a sum of £10,000 for the distress, anxiety and stress she experienced as a result of the Practice's service failure and the extensive and far-reaching effects on her life.

Category B – Bereavement

Definitions of injustice categories and types

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Category B – Definition

Bereavement is treated as a separate category of injustice. This is because the grief of death, particularly avoidable death, is not adequately captured by the other injustice categories and in many instances does not fall neatly into those categories. Bereavement may arise as a direct consequence of service failure. However, even where there is no certain link, any doubts about the quality of care or treatment provided to the deceased person may also give rise to significant injustice.

The bereavement category recognises that death will have a strong emotional impact, as well as possible material and physiological consequences for the deceased person’s family. It may not be appropriate to record these separately where a bereavement injustice type is used, except where there are particular reasons for doing so. One such reason would be where the patient’s family are witness to significant pain and suffering, giving rise to injustice type E3.

NB: Exceptionally, it is possible that injustice types B1-B4 may arise as a consequence of maladministration; however, we have no recorded examples.

B1: Bereavement arising from avoidable death

This injustice arises when we make a finding that, in consequence of service failure, a death has occurred in circumstances where, on balance of

probabilities, it could have been avoided if clinicians or nursing staff had acted appropriately.

Injustice types B1, B2 and B3 are generally mutually exclusive.

B1 case example:

Mr H complained about the care and treatment his late mother, Mrs H (aged 92), received while she was a patient at [redacted] (the PCT's) and [redacted] (the Hospital). He also complained that the PCT had not been open and honest in its responses to his complaints. Mr H believed that his mother died prematurely because of the poor care and treatment she received during her stay in the Hospital. He said that the PCT's handling of his complaint left him feeling extremely frustrated and distressed. Our investigation found that the care and treatment provided for Mrs H by the PCT fell so far below the applicable standard that it was service failure. Furthermore, we found maladministration in the way the PCT handled Mr H's complaint. We concluded that, but for this service failure, it was likely that Mrs H would have survived her illness. We found that an injustice to Mr H arose in consequence of this service failure, in that he has suffered distress from his mother's avoidable death. Mr H also suffered the injustice of additional distress and inconvenience (injustice type E3) in consequence of the maladministration we identified. In January 2012, we recommended that the PCT pay Mr H the sum of £10,000 by way of financial redress.

B2: Bereavement where survival chances were compromised or where there was a loss of opportunity to provide treatment that may have prevented or delayed death

This injustice type occurs when we find that either the likelihood of death was increased or the patient's chances of survival were reduced as a consequence of service failure. This includes cases where there was only a very small chance of survival, which is lost; and cases where we find that the death probably could not have been avoided but where we consider that better treatment may have extended the patient's life.

Death in these circumstances will generally leave the deceased person's family in the position where they will never know whether, but for service failure, there could have been a better outcome for the deceased person.

Injustice types B1, B2 and B3 are generally mutually exclusive.

B2 case example:

Mrs O complained about the care and treatment provided by [redacted] NHS Foundation Trust (the Trust) to her sister, Mrs W. Mrs W committed suicide while she was an inpatient on a psychiatric ward run by the Trust. Mrs O said that Mrs W was not properly assessed, in particular that she was never assessed by a doctor, and that the observation regime was too casual. Mrs O

believed that 'Mrs W was given the freedom to carry out suicide whilst in the care of staff' on the psychiatric ward. She also said that she had to 'fight' to get a copy of the Trust's internal review and this made her very suspicious that the Trust was hiding something. Our investigation found that the Trust failed to adequately assess Mrs W's risk of self harm or suicide, or assess her needs. We were unable to conclude with certainty that the failures identified led directly to Mrs W being given the 'freedom' to commit suicide in the manner she did. This was because we could not say, had adequate assessments been carried out, what conclusions would have been reached. We did however find that by failing to assess Mrs W's needs and risk properly, the Trust missed an opportunity to minimise the risk of her committing suicide. This resulted in the injustice of Mrs O and her family not knowing whether Mrs W's suicide could have been prevented, which in turn causes them unnecessary and ongoing distress. Mrs O's distress was compounded (injustice type B5) by the Trust's handling of her request for a copy of the Trust's internal review. In February 2012, we recommended that the Trust pay Mrs O the sum of £5,000 as compensation for the injustice she suffered as a consequence of the service failure and maladministration.

B3: Bereavement where the impact of death was exacerbated by poor standards of care or treatment, where there is no evidence that service failure was a contributory cause of the death

This injustice type usually arises where we consider that service failure did not compromise the patient's chances of survival (that is, where survival chances were negligible), but where the standard of care provided to the patient was so poor that the quality of her or his last days was significantly worse than would have been the case with better care. Typical situations include failure to diagnose terminal illness, so that appropriate end of life care is not provided. This injustice may also arise if there are significant service failures after death; for example, failure to properly attend to or handle the body.

This injustice type may arise even where there is no suggestion in the complaint that death arose as a result of service failure, but where service failure impacted on the family's ability to grieve or obtain closure.

Where the failures in care and treatment result in the patient experiencing significant pain and suffering, and this is witnessed by the patient's close family, it may be appropriate to consider injustice type E3 in addition to type B3.

Injustice types B1, B2 and B3 are generally mutually exclusive.

B3 case example:

Ms H complained about the management of her late husband's, Mr H's, bowel problems by GPs at the Dr A and Partners GP surgery (the Surgery). Ms H believed that the late diagnosis of her husband's bowel cancer

compromised his chances of survival and led to his premature death. Our investigation found that Dr A failed to make an urgent and timely referral to a colorectal specialist, and did not carry out an adequate assessment. This resulted in an additional delay of approximately four months before Mr H's cancer was diagnosed and treatment started. We concluded that, because of the slow growing nature of that type of cancer, an urgent referral made four months earlier would not have led to the disease being diagnosed at a stage where it was still curable. However, we did find that Dr A's failings led to considerable distress both to him and his wife. Mr and Ms H were understandably concerned that Dr A did not appear to be taking his condition seriously. This was compounded by the fact that Mr H was left to make his own hospital appointment, and both he and his wife were understandably extremely anxious about the difficulties they encountered and the delays they faced in trying to do so. Mr and Ms H were caused further ongoing anxiety and distress as a result of not knowing whether the delay in referring Mr H to hospital was responsible for the progression of the disease and the sad outcome. In March 2012, we recommended that the Surgery pay Ms H £1,000 for the distress caused to her as a result of the delay in her husband being referred to hospital, and the ongoing anxiety and distress caused by not knowing until she saw our report whether this delay contributed to her husband's death.

B4: Bereavement where, due to poor communications, an opportunity was lost to properly prepare for death or to be with the deceased at time of death; or where the deceased person's family were excluded from decisions about care and treatment

This injustice type arises when the close family of a deceased person were placed in a position where they believe that they were excluded either from the patient's care and treatment, or from the patient's physical presence, as a result of service failure or maladministration; or where family members were otherwise not given the opportunity to prepare for the patient's death.

Injustice type B4 may be used in conjunction with other bereavement injustice types.

B4 case example:

Mrs S complained that the care and treatment her father, Mr K, received from the Trust was inadequate. She also said poor communication on the day left Mr K's family extremely ill-prepared for his death. Our investigation found service failure in relation to Mr K's care and treatment and the Trust's inadequate communication with his family and maladministration in the Trust's handling of Mrs S's complaint. We found that it was unlikely that earlier appropriate medical treatment would have produced a positive outcome given Mr K's age and the length of time since the onset of his symptoms. However, we did find that the lack of clear senior management of Mr K's treatment, the absence of a senior clinical decision until late in

the day and poor communication created an atmosphere of confusion for Mr K's family. Mr K's family were given misleading information about the severity (or otherwise) of his condition and then were not told throughout the day of the treatment options available, the associated risks and Mr K's prognosis. This resulted in a family member returning to work believing that Mr K would recover. We concluded that this would have caused the family distress and anxiety. We also found the lack of care planning and consideration given to Mr K's privacy in his final moments unnecessarily increased the family's distress and anxiety. In February 2011, we recommended that the Trust pay £1,000 to Mrs S as compensation for the injustice she has suffered.

B5: Bereavement exacerbated by poor complaint handling or by failure to provide explanations about the circumstances of a death

This injustice arises when the natural distress of close family following bereavement is exacerbated or extended through failures in complaint handling or some other failure which impacts on the ability to secure closure.

Generally, where we record this injustice type it will not be necessary to also record type M17.

Injustice type B5 may be used in conjunction with other bereavement injustice types.

B5 case example:

Mrs T complained about the care provided to her late mother, Mrs S, by [redacted] (the Care Home) during an admission in 2007. She also complained about the standard of the handling of her complaint about a Care Agency who cared for her mother at home after her discharge from a Care Home in the period leading to her death. Although we were critical of a number of aspects of the Care Home's care and treatment of Mrs S, we did not find that overall their actions fell so far below the applicable standard as to constitute service failure. However, we did find maladministration with regard to the Care Agency's handling of Mrs T's complaint. Mrs T said that the hostile tone of the Care Agency's response to her complaints compounded the distress she was feeling as a result of witnessing what she perceived as a poor standard of treatment provided to her mother. We found that the Care Agency failure to respond to her complaint sensitively, bearing in mind her individual circumstances resulted in Mrs T suffering unnecessary distress over and above that which she was already feeling as a result of her mother's death. In our report we said that we had been outraged by the crass and offensive insensitivity of the emails the managing director sent. In August 2011, we recommended that the Care Agency pay Mrs T the sum of £750 by way of financial redress for the unnecessary

distress caused to her by the maladministration identified by our investigation.

Annex A: Investigation closure codes

Further work required by organisation

Potential failings identified but we decide that the organisation should review the complaint and consider how it might be resolved.

Mediated outcome – Complaint remedied without findings being made

Where we have mediated a resolution with the organisation and the complainant which means we can close the investigation without making findings or recommendations.

Not upheld - No maladministration or service failure

No maladministration or service failure identified.

Not upheld – Failings found but already accepted and remedied by organisation

Failings identified but we are satisfied that the organisation has taken appropriate and reasonable steps to put things right before our involvement.

Partly upheld – Failings found but no injustice

Failings identified but they have not led to any injustice or hardship. If the organisation has already accepted and acknowledged the same failings we have identified, the appropriate closure code might be 'Not upheld – Failings found but already accepted and remedied by organisation', as above.

Partly upheld – Failings found but not injustice claimed

Failings identified but the injustice is not as great as that claimed.

Partly upheld – Multi-strand complaint

To be used where there are a number of different strands to the complaint and we have upheld some but not all.

Upheld – Failings found leading to an unremedied injustice

Failings identified leading to an injustice or hardship that has not been suitably remedied by the organisation.

Discontinued

Where there is a reason not to carry on with the investigation.

Other

To be used where none of the other closure codes are relevant. For example, Cafcass cases where there might have been failings and an injustice but we decide that it was more appropriate for those issues to have been raised and resolved in Court.

Complaints about us/review closure codes

Upheld

Complaint upheld - error in decision

Complaint upheld - service failure

Partly upheld

Partially upheld

Not upheld

Complaint not upheld

Withdrawn

Complaint withdrawn