

Financial Redress for Maladministration

A GUIDE FOR SPECIAL PAYMENT OFFICERS

**Complaints, Redress and Stewardship Team
December 2013**

This guide replaces any previous guidance and will apply to all special payment considerations being made on or after 9 December 2013.

Executive summary

The Department's position on providing customers¹ with financial redress for maladministration is set out in the policy document: "[Financial Redress for Maladministration: Special Payment Scheme – Policy and Guiding Principles](#)" (published April 2012).

In addition to the high level policy document, the Complaints, Redress and Stewardship Team (CReST) who have responsibility for DWP's special payment policy, has produced this guidance to aid staff who are responsible for making special payment decisions. It contains further information about the circumstances under which special payments can be made to customers and provides advice on the process. The scheme is discretionary, so this guide should not be read as a rigid set of rules or a blueprint for every situation.

Each case must be considered on its own merits, having regard to the guiding principles of the Department's special payments scheme, and when necessary with advice and direction from CReST on the interpretation of the policy and guidance.

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¹ Special payments and losses arising in non-customer cases (such as staff and members of the public) are contained in [Losses and Special Payments to Staff and Members of the Public: a Departmental Framework](#).

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Introduction to special payments

1. The Department aims to provide a good level of service to its customers but sometimes things do go wrong. When that happens, we should put matters right as quickly as possible. As part of that process, we should consider redress. Redress might include any of the following: a sincere apology; an explanation of what happened and what has been done to rectify matters; corrective action. However, if our action/inaction was sufficient to be considered maladministration and it had a negative impact on the customer we can also consider financial redress (special payments).

The Role of the Special Payment Officer

Overview

2. In the absence of any legal requirement to make special payments, the decision as to whether to award a special payment rests with the Secretary of State. However, in practice the Secretary of State does not make decisions personally. Instead, officials act on the Secretary of State's behalf. Throughout this guide these officials are called **special payment officers**.

3. Special payment officers take all necessary actions on behalf of the Secretary of State, including:

- ensuring they have sufficient information to inform the decision;
- using that information to make fair and justifiable decisions on individual cases; and
- dealing with administrative matters such as arranging for their decisions to be notified and implemented.

4. In making decisions, special payment officers must consider all relevant/ available evidence, and apply the Department's policy and guiding principles (see paragraph 51) to the facts of each case. Their role is to establish if the case was maladministered and if so, what impact this had on the customer. If the impact was sufficient to warrant financial redress, the special payment officer decides what to pay and how much the award should be.

Considering the evidence

5. In order to make a special payment decision which is consistent with the guiding principles, the special payment officer must have regard to all the relevant facts. Typically the information provided with the referral will include both the customer's and the business' view of what happened. As these views might differ considerably, supporting or objective evidence can help the special payment officer reach their own conclusion about whether the case was maladministered or not.

Types of evidence

6. There are various types of evidence, for example:

- **direct** – such as, a statement by a witness to an event / incident;
- **indirect** - such as, a statement by someone who saw the customer immediately after an incident;

- **hearsay** - such as, a statement from someone who was told about an incident.

7. Evidence may take various forms, for example:

- **documentary** – such as, contemporaneous notes or letters;
- **oral** – such as, a statement given verbally (as in a telephone call).

8. Special payment officers may use any type/form of evidence to inform their considerations. Some types will carry more weight than others. As a general rule, direct evidence is more significant than indirect or hearsay evidence. The weight given to each piece of evidence needs to be carefully judged in light of the circumstances of the case.

9. It is generally easier to recall details from a recent event than one that took place many years ago. As memories can be unreliable, the sooner evidence of an alleged incident or event can be gathered and considered the more weight can be given to it when reaching a decision. The special payment decision form (SPEC1) should make it clear who provided the evidence/information, what type of evidence it is, and when/how it was provided. An example of a SPEC1 form is at annex A.

Using an expert to help establish the facts

10. The special payment officer may use the help of an expert in cases where a question of fact needs special expertise. An expert is a person who appears to the special payment officer to have knowledge or experience in determining a particular question of fact. For example, a benefit expert's help might be needed to confirm if the rules were applied correctly/incorrectly in a case, or to establish whether or not benefit can be paid on a statutory basis. The statutory route must be explored first. It would not be appropriate to pay a special payment for loss of benefit if that benefit (or something similar) can be paid on a statutory basis.

Corroboration of evidence

11. The customer's case records may hold information which corroborates their allegations. For example, if the customer says they were given incorrect information in a telephone call and there is a recording of the call, this should form part of the evidence. The customer may have evidence which supports their version of events too. Where such information is available, it should be provided. However, a special payment can be considered even if there is no supporting evidence/information. In many cases, a statement from the customer, whether oral or written may be the best/only evidence available, even after enquiries. The role of the special payment officer is to weigh any such evidence/information, in light of the circumstances of the case.

Contradictory or inherently improbable evidence

12. The special payment officer may decide that evidence is contradictory or improbable. Such evidence may contradict itself/other evidence, or the special payment officer may consider that it is unlikely to be true. In such cases the special payment officer may:

- request further evidence with a view to resolving the discrepancy;
- seek a further view, for example from his or her line manager;
- determine whether there is sufficient evidence to decide a particular point on the balance of probabilities (see paragraph 22).

Decision making

13. Decisions made in accordance with the special payment scheme should, whenever possible, restore the individual's affairs to the position they would have been in, but for Departmental maladministration. If this cannot be achieved, the individual should be provided with reasonable and proportionate redress, in light of the circumstances of their case. A special payment decision is based on the facts as they exist at the date of the decision.

What constitutes maladministration?

14. The term 'maladministration' is not defined but is sometimes used to describe when our actions or inactions result in a customer experiencing a service which does not match our aims or the commitments we have given. It applies to situations in which we have not acted properly or fairly or have provided a poor service. For example, wrong advice, discourtesy, mistakes, delays, faulty procedures, bias, or failing to inform a customer on request of their rights/entitlements. Although lengthy, this list is not exhaustive. A special payment can only be made if we have:

- maladministered the case; and
- disadvantaged the individual (caused an injustice or hardship) as a result of that maladministration.

15. It follows that the special payment officer must be satisfied that the evidence confirms both these points. If there is doubt about the maladministration or the impact then this must be settled before the officer can make their decision.

Deciding special payments in cases investigated by the Independent Case Examiner (ICE) or the Parliamentary and Health Service Ombudsman (PHSO)

16. See Annex B for ICE and PHSO details. Whilst it is normally for the special payment officer to decide if maladministration has occurred and if a special payment should be made, they have a slightly different role in ICE/PHSO investigation cases. ICE and PHSO investigations involve a full review of the case evidence and they reach their own conclusions about maladministration and the impact on the customer in line with their findings. However, to ensure that their findings are accurate, ICE/PHSO provisional findings are shared at draft stage with the businesses' Focal Points. If there are any concerns about the case, this is the stage to raise them.

17. It is the role of the Focal Point (with input from the business, including special payment officers and CReST where the recommendations involve financial redress) to check the accuracy of the facts which are being used by ICE/PHSO to inform their findings about maladministration. If there are any issues with the facts/findings, these should be addressed by the Focal Point at the draft report stage. Disputes regarding the findings of ICE or PHSO investigations are dealt with by the relevant PHSO/ICE Focal Point in accordance with agreed escalation routes.

18. It follows that it would be premature to agree redress until the facts and the maladministration have been confirmed. However, once the findings are accepted, the Focal Point should ask the relevant business' special payment team to confirm that the case for financial redress has been clearly articulated and that the payment is in line with special payment policy and guidance. The ICE/PHSO investigation report should provide

sufficient details about the maladministration and the impact on the customer to justify the payment they want to make. Both ICE and PHSO may stipulate the amount to be paid in their reports. If the redress relates to an actual financial loss or additional costs incurred, the amount should be explained within the draft report. However, consolatory payments are a judgement call made by the ICE/PHSO and as such, the amount may not be determined until the final stages of the case. The expectation is that the maladministration and the amount (where specified) should be accepted unless the case for a payment is not sufficiently articulated or it is not in line with the policy intent. If the case satisfies these points, the special payment team should (with input from CReST, as appropriate) agree the payment at draft stage and authorise it at the final stage. Any payments which exceed the businesses' delegated limits should be referred to CReST in the normal way (see Annex C for the delegated limits and paragraph 164 onwards for how to make a referral). If the special payment officer has any concerns about the case, they should raise them with CReST who will decide whether to raise them with the Focal Point/ICE or PHSO (as appropriate).

19. *Please note that this process only applies to ICE/PHSO investigation cases. Cases which ICE is attempting to resolve without recourse to the evidence are considered in the usual way, with the special payment officer reaching a view about the maladministration, the impact on the customer and whether a special payment is appropriate.*

20. Deciding whether a case has been maladministered is not always straightforward. The following paragraphs look at some of the more common problems and provide advice about how best to deal with such decisions.

Cases with little/no supporting evidence

21. If there has been a significant delay between the date of the alleged maladministration, the point at which its effect becomes apparent, and the date the complaint was made there might be little or no documentary evidence available to support or contradict the customer's assertion that maladministration occurred. Nevertheless, a fair and defensible decision must be reached using whatever evidence is available.

Making a decision on the balance of probabilities

22. Documentary or incontrovertible proof is not an essential requirement for the authorisation of a special payment. The fact that documents may have been routinely and correctly destroyed, and there is little/no supporting evidence would not in itself justify a refusal to make a payment.

23. In cases where the process of gathering evidence has been exhausted, but it remains unclear whether a particular event or incident occurred, or whether a particular assertion is true, it falls to the special payment officer to decide matters on the balance of probabilities. This must not be confused with the test of "beyond reasonable doubt" (the standard test of proof in criminal trials).

24. The balance of probabilities involves the special payment officer deciding whether it is more likely than not that an event/incident occurred, or that an assertion is true. This does not mean that the customer should be given the benefit of the doubt: it is only fair to recognise that it would be in their interest to recall events in a certain way if this might mean they receive some financial redress. It is also true that on occasion, customers may

genuinely interpret facts or events differently from staff, and that this in turn may influence their understanding of events.

25. If the evidence is contradictory the special payment officer should decide whether there is enough evidence in favour of one conclusion or another. If the special payment officer is unable to decide the matter s/he should seek a view from a senior officer. A decision must be reached. If there is insufficient information to support a payment then it should be refused.

Example:

A customer is advised by friends that he should be entitled to extra state pension to reflect the fact that he has a dependant wife below state pension age.

He subsequently makes a successful claim for additional dependency increase and says that he would have claimed this sooner but for incorrect advice from DWP. He says he asked if he could claim for his wife after he received his State Pension application pack and was told he could not as she was too young.

The evidence shows that a standard application pack was issued to the complainant prior to the date he became eligible to claim state pension, which included information about the circumstances in which a claim could be made for a spouse below pension age. System records also indicate that the complainant made a telephone call to The Pension Service prior to the return of his pension application, although details of the discussion which took place and any advice given have not been recorded/ retained.

Having regard to the available evidence, the decision maker needs to consider the plausibility of the customer's allegations and reach a decision, on the balance of probabilities, as to whether the customer was given incorrect advice as alleged.

Misdirection

26. Misdirection is accepted if we have provided the wrong information to a customer/customers and this has resulted in them being disadvantaged.

Example:

A customer and his wife applied for Income Support in 2010 when their savings were just under £2000. After the benefit was awarded, they made enquiries about the capital limit and said that it appeared it was a lot higher than they thought it was. They said it was their understanding that they could not claim until their savings were below £2000. They requested backdating of the award to 2008, on the basis that they could have claimed sooner than they did. The tribunal explained the statutory time limits for backdating but suggested that they seek compensation for misdirection. The customer complained to DWP and said that they had asked if they could claim Income Support in 2008 and were told that their capital was too high. They said that they were told that they could not claim until their savings were less than £2,000 and that they had not claimed for a year and a half as a result of this advice. They complained that the information was incorrect and that they could have claimed from the outset. They asked for compensation on the basis that they would

have claimed sooner but for the misinformation. You would need to gather more information about the alleged misdirection to see whether it was DWP's fault they had not claimed the benefit sooner.

27. If a customer alleges misdirection, you should gather as much information as possible about the misdirection event. Usually this is done by the business via an interview. It is more helpful to ask the customer to recount everything they can remember about the event rather than seek to direct the conversation by asking leading or closed questions. This is the customer's opportunity to provide their version of events. If there is no supporting evidence in the customer's records (for example, the misdirection occurred in a telephone call and the call was not recorded or deleted in line with data retention policy) you should ask the customer for any supporting information they have. For instance, in this example, they might have kept a note of the call detailing when they telephoned and who they spoke to which might help to corroborate the allegation. If there is no corroborative evidence/information you will need to consider the decision on a balance of probabilities (see paragraph 22).

28. Bear in mind that you are considering if it is more likely than not that the event took place as the customer described and not whether it is feasible. It is not appropriate to accept the customer's account solely because there is no evidence or because there is no evidence to the contrary. You might find it helpful to have the business' view of how they would have dealt with that type of enquiry at the time. DWP's Library Services can also provide invaluable insight to past procedures as they have access to a back catalogue of information which includes customer leaflets. Remember too that DWP is not responsible for prompting customers to claim. The onus is on the customer (with help from family, friends, their representatives or advice centres if necessary) to research and claim any benefit appropriate to their circumstances. If customers ask a general question about benefits this is likely to produce a general response. However, a specific question should result in a more detailed response.

Example:

A customer is awarded income based Employment and Support Allowance and Housing Benefit. She cannot meet all her rent as the Housing Benefit is capped. A few years later (after speaking with Welfare Rights) she claims Disability Living Allowance (DLA). It is initially refused as her medical condition does not normally result in care/mobility needs but subsequently allowed by a tribunal. The customer complains that she was not told about this help in an earlier telephone call she made about her financial struggles with her rent. There is no evidence of the call in her benefit records and the customer cannot recall when it was, which office she telephoned or who she spoke to. She said her condition made it difficult for her to find out about benefit entitlement on her own. In considering her allegation, you would need to know what questions she asked to judge if the advice she says she was given was incorrect. You would also need to know what details she divulged about her circumstances to see whether the call operator could reasonably have been expected to suggest she claim DLA.

Delays

29. There are a number of factors to take into account when deciding if a delay constitutes maladministration:

- the time normally required to administer the relevant process;

- whether the case was complex;
- whether there were any other mitigating circumstances, such as an unusually high volume of cases; and
- whether the customer's actions/conduct contributed to the delay.

Allowing reasonable time for processing of claims and applications

30. All dealings with the Department take time, whether or not errors occur, as officials are required to make sure that they have sufficient information to determine any entitlement. If they have insufficient information, any further details must be gathered before entitlement to benefit can be established. Due to the different nature of individual benefits, the time needed for this process varies from benefit to benefit. One possible such indicator is the actual average clearance times. If someone has complained about the time it took to process their claim but it was processed promptly and within the normal timescale for that benefit then redress will not be appropriate.

31. In the majority of cases, the Department should process claims and applications within a reasonable timescale. Where there has been a delay, it is necessary to assess whether, and if so the extent to which, Departmental maladministration contributed to the delay. For example, if the customer has contributed to the overall delay by not returning the evidence needed to assess their case for months, this needs to be factored into the consideration. In addition, some cases will legitimately take longer to process than others because of the complex nature of the case, or an unanticipated and abnormal volume of cases. In such cases, consideration will need to be given to the way in which the Department managed delayed applications, and customers' expectations in determining whether its actions were maladministrative.

32. Where payments are accepted as having been delayed as a result of maladministration, a special payment can be considered for any impact caused, such as losses or costs (for example, loss of value if the delay exceeds a year or overdraft charges if the account became overdrawn due to our delay in paying benefit) or a consolatory payment for any inconvenience caused.

Impact on linked benefits

33. The award of certain benefits (linked benefits) is dependent on the customer being in receipt of an associated benefit (qualifying benefit). For example, when the higher or middle rate care component of Disability Living Allowance is payable, a customer's carer may be entitled to Carer's Allowance.

34. When maladministration results in delay determining entitlement to a qualifying benefit or in the payment of a qualifying benefit, this can have a knock-on effect on the award of any linked benefit. A special payment should be considered for the impact of the delay in respect of both benefits.

Delayed implementation of a disputed decision or appeal outcome

35. If a decision is overturned during the dispute process or as the result of an appeal, and the implementation of the new decision is delayed as a result of our maladministration a payment in respect of the impact of the delay can be considered.

36. For the purpose of determining the extent of any delay in implementing a new decision, consideration should be given to the date on which the tribunal decision was received from the Tribunal Service and the actions required following notification of the decision.

Decisions overturned on review or appeal

37. The fact that decisions on entitlement to benefit/child maintenance carry review and appeal rights, demonstrates that Parliament clearly envisaged some decisions being open to legitimate debate, for which it provided a degree of independent decision making to resolve such issues.

38. The expectation is that the vast majority of benefit/child maintenance decision makers will have used their knowledge of the case, guidance and legislation to reach a reasonable decision. Therefore the revision of a decision (whether by DWP officials or by a tribunal) should not be regarded as proof that the original decision was maladministrative. The decision may have been revised for a number of reasons. For example, the new decision maker may have evidence before them that was not available at the time of the original decision, or may choose to interpret the facts differently. Tribunals may also provide a fresh interpretation of the law or provide clarity of thinking around a piece of legislation that could be interpreted in several ways. In any of these circumstances the DWP official/higher tier is not saying that the original decision was maladministrative, but is using further information, further insight into the law or any discretion invested in them, to make a different decision.

39. Whilst the overturning of decisions by higher tiers was clearly envisaged by Parliament, it made no provision for financial redress to be paid, over and above any arrears that might be due on a statutory basis. As such, it is not normal practice to make a special payment when benefit/child support is awarded/amended following the overturning of a decision by a new decision maker/higher tier. This is the case even when large sums of arrears become due unless the criteria described in paragraphs 40 to 42 applies.

40. The exception to this general policy applies when the original decision was **wholly unreasonable** or **clearly incorrect based on the evidence available at the time, and the law as it was then understood**.

What is a 'wholly unreasonable' or 'clearly incorrect' decision?

Wholly unreasonable

41. The position that is to be adopted is similar to that used in Judicial Review. To be regarded as wholly unreasonable, it is not sufficient for the decision to be one that another person would not have made. Nor is it sufficient for the original decision to have been wrong in law (given the complexity of the law and the degree of interpretation available to decision-makers). Instead we use Lord Diplock's definition:

Lord Hailsham observed:

'Two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.'

So the mere fact that a different decision is later made by someone else does not make the original decision wholly unreasonable.

Lord Diplock expanded on that principle by saying that to be ‘*wholly unreasonable*’ the decision must be:

‘so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.’

Clearly incorrect

42. Some benefit decisions are made without full off-line consideration. Rather they involve the input of information onto the computer to reach a determination. Errors or oversights in this type of decision are more likely to satisfy the definition of ‘clearly incorrect’ than ‘wholly unreasonable’ decisions. A decision may be regarded as ‘clearly incorrect’ if it is self-evident that it is wrong. Accidental or ‘slip of the pen’ errors that have adversely affected the customer could be considered under this category.

Example:

A decision maker may have intended to award a benefit or premium but due to a simple inputting error, this was not implemented.

43. In order to form a view on whether the original decision was wholly unreasonable and/or clearly incorrect based on the (then) known facts/understanding of the law, it may be necessary to seek an expert opinion. For benefit decisions try the [decision making and appeals team](#) or the [decision making and appeals policy team](#). Both are in the corporate centre. For child maintenance decisions, contact the [advice and guidance team](#).

Determining the impact of the maladministration

44. Once you have established that maladministration occurred, the next step is to see how that affected the customer. There will be occasions where despite the poor service, there was no discernible impact. In these situations, you should correct the case, explain to the customer what happened, what has been done to rectify matters and apologise. If the customer has benefited financially from the maladministration then you might decide that, taken in the round, they have received sufficient financial redress.

45. If the customer alleges they have been affected in a way that seems unreasonable in the circumstances, you should record why you do not accept it. For example, a customer complains solely by email but claims for printing, postage and recorded delivery costs. There is no evidence to show the customer incurred these costs, so there would be no justification to pay them.

Deciding whether the customer acted reasonably

46. In determining the extent to which Departmental maladministration has resulted in

a customer (or third party) experiencing an injustice or hardship, it may be necessary to consider whether a customer acted reasonably in relation to their dealings with the Department.

47. In doing so, the special payments officer may, for example, wish to consider:

- the nature, quality and accuracy of any official information or advice provided to the customer;
- the information available to the general public through Departmental publicity;
- the customer's age and/or health;
- whether the customer gave false, misleading or incomplete information which the Department could not reasonably have been expected to challenge;
- the length of time before the customer acted, and the reasons why.

Making fair and justifiable decisions

48. It has long been accepted that, for reasons of fairness and equity, similar case facts should give rise to similar financial remedies, unless the circumstances of the case can justify an alternative remedy. This remains the case.

49. However, it is equally important that each case is considered on its own merits. All special payment decisions should have specific regard to:

- any injustice and/or hardship experienced by the individual as a result of Departmental maladministration;
- the length of time it has taken to resolve a complaint or provide redress in response to Departmental maladministration;
- the time and trouble the individual has had to go to, in order to obtain appropriate redress;
- the most appropriate financial redress (a payment in respect of one category does not exclude consideration of a payment in respect of an additional, separate category).

Example:

A Departmental error, which results in disruption of benefit payments to a number of individuals, might affect each one differently. For example, the disruption might:

- have had a relatively limited impact on individuals who had other sources of income; but
- have caused others to experience severe hardship/distress.

Although each one had their benefit disrupted, a blanket approach to redress might not be appropriate if they were affected differently by the error.

Making a discretionary decision

50. There is no legislation governing special payments. They are discretionary payments which means that deciding whether to make a payment, and if so how much to pay, is a matter of judgement. For this reason it is especially important to record the rationale for paying/refusing a payment so that it is clear how a decision was reached. If evidence was disregarded or given less/more weight the reasons for this should be explained within the decision. If the customer subsequently asks ICE/PHSO to look at the

reasonableness of the special payment, they would look at whether the decision maker had regard to all the instances of maladministration. Therefore it is helpful to document everything that was considered so it is clear what information was taken into account. (See paragraph 53 and the Administrative Process for details about recording your decisions.)

DWP's guiding principles

Guiding Principles of the Department for Work and Pensions' Special Payments Scheme:

- Individuals should not be disadvantaged as a result of maladministration;
- Injustice and hardship resulting from maladministration should be addressed on a case by case basis;
- Fair and justifiable decisions should be made in respect of individual cases; and
- Special payment decisions should culminate in timely and appropriate financial redress for individuals.

51. The guiding principles of the DWP special payment scheme are explained in the policy document "[DWP's Financial Redress for Maladministration](#)". These should be considered in each special payment decision. They will help you ensure that your decisions:

- consider each case on its own merits, taking account of the individual's circumstances;
- return the individual (where possible) to the position they would have been in but for the maladministration, but do not advantage them;
- are fair and consistent and take into account the customer's own actions;
- are made promptly or take into account any delay in considering redress.

PHSO's Principles for Remedy

52. Our principles draw on PHSO's Principles for Remedy (which go beyond financial redress). There are six principles which you might also want to consider when making your decision. These are detailed in annex D or can be found on the [PHSO's internet site](#).

Recording the special payment decision

53. An example of a special payment decision form (SPEC1) is provided at Annex A. Whilst the operational businesses can adapt this for their own purposes, we recommend keeping the titles used in Section C (summary of case) to prompt officers to consider the information which is needed to reach a sound decision. The SPEC1 should be a standalone document which clearly articulates the case for maladministration and supports the payment decision. We do not recommend that you attach other documents to explain what happened or what should have happened. The SPEC1 should provide all the information about the case.

- What happened: this section should record the facts of the case (in chronological order), making it clear which are actual facts (ie supported by evidence) and which are not supported by evidence but provide the customer's or the business's view of events.
- What should have happened: this section should explain the normal process/procedures for dealing with the matter in hand. These act as a benchmark for what happened and should highlight whether we acted appropriately (ie in line

with procedures) or whether we did not follow the guidance/procedures in place at that time. If we should have done something differently, what was it, and where does it say so? If this is opinion rather than guidance or legislation this needs to be made clear on the SPEC1. This is the section that usually has the least information in. If you are not sure, seek advice from the benefit/child maintenance experts.

- *Has maladministration been identified? If so, how did this affect the individual concerned?* This section should explain if we got it wrong. If we did not maladminister the case, there is no basis for a special payment and it should be refused. If we did something wrong, what was the impact? Sometimes the impact the customer describes is not reasonable or there is no clear link between what went wrong and the impact they describe. In these cases you should outline the customer's view and then explain why you do not accept that there is a link.
- *What financial redress is appropriate?* This section is for recording your view about how we can best put the customer back to the position they would have been in if we had not maladministered their case. The redress should look to address the impact caused by the maladministration. If the customer has expressed a view about what redress they want, you should include this too. Ultimately what they request may not be reasonable, but you should still show you have considered it and why it isn't appropriate.

54. The SPEC1 is a living document until the special payment officer makes their decision. If new facts emerge which are pertinent to the decision, or if advice from CReST or benefit/child maintenance experts helps you reach a new conclusion, the SPEC1 needs to reflect this. The new facts should be added to the section entitled 'what happened?' or 'what should have happened?' as appropriate and you should revise the other sections to reflect the final decision as necessary. The SPEC1 should explain your final decision as clearly and as fully as possible. If the customer is unhappy with the decision, then a reviewing officer (and ultimately ICE or PHSO) will use this document to understand what you considered and how you reached your decision.

Seeking advice from the Complaints, Redress and Stewardship Team

55. If you have any queries about the special payment policy or you want help with a complex case, you can ask the CReST for advice. You can either:

- call us with details of the case and your concerns; or
- email details of the case (for example, the referral/decision form SPEC1) and your questions to us.

56. There are further details about making a referral in paragraph 166. This also explains which cases must be referred to CReST for checking/authorisation.

Written notification of a special payment decision

57. Individuals should receive clear, comprehensive explanations for special payment decisions, incorporating details of how they can progress any concerns they may have about the special payment decision.

58. Some paragraphs which may be of use in preparing letters to customers and signposting them to the review tier(s) are included at Annex E. The letter accompanying the payment must be written in a sensitive and empathetic way and include the following, where appropriate:

- provide a summary of the complaint and the outcome of any investigation;
- include, where an error has been made by DWP, an acknowledgement of that error and an apology;
- provide a clear, concise and full explanation of why the payment is being made or cannot be made;
- explain that a continuing award may be affected by future changes in circumstances;
- explain that an overpayment has been recovered from the special payment (give the details of the overpayment);
- explain that some special payments are taxable (Loss of Statutory Entitlement payments in respect of NI based benefits);
- explain that the Department's special payment scheme is discretionary and that whilst special payment decisions do not carry a right of appeal, the decision can be looked at again, for example, in the light of fresh evidence. Explain what they should do next if dissatisfied with the decision;
- if the letter is also a response to a complaint, provide details of how a customer can take their complaint further – that is, provide details of how to take the complaint to a higher tier within the business, or how to contact ICE and/or PHSO.

Disputes about special payment decisions

59. As special payment decisions are discretionary and are not based on a rigid set of rules, people will from time to time have a different view about the same case. You can resolve this in several ways. You can debate the case within your team, seek your manager's view or ask CReST for advice.

Disputes/escalations within DWP

60. In most instances, the advice you receive from CReST should provide the way forward. However, if you are unhappy with either the advice you have received from us or our refusal to authorise a payment which is over your delegated limit, you can raise your concerns as follows:

Action for the business:

- Discuss the matter with relevant senior managers and seek their agreement on the need to escalate;
- Complete the proforma at annex F to articulate:
 - The maladministration that occurred (specifically, what happened/what should have happened/the service failure);
 - How the maladministration impacted on the customer (specifically, how they were financially disadvantaged and/or caused inconvenience, embarrassment or severe distress);
 - Any additional information or advice which you think is relevant in supporting your position/argument.
 - Ask CReST to reconsider their decision.

CReST Step 1:

In response CReST:

- will consider your representations;
- may suggest a telekit, to discuss the detail of the case;

- will issue a final decision within 5 working days - any final decision issued by CReST will have been cleared by the Head of Legislation, Better Regulation, Stewardship and Complaints.

CReST Step 2:

If you remain dissatisfied with the final response from CReST you can ask your Senior Civil Servant (SCS) to approach the Head of Feedback, Legislation and Decision Making (CReST's SCS). Please send a copy to the Head of Legislation, Better Regulation, Stewardship and Complaints. In response, CReST's SCS will:

- consider your representations;
- review the final response from CReST;
- provide direction on next steps within 5 working days (if this cannot be achieved we will let you know when you can expect a response). This may include (a) agreement to authorise financial redress or (b) a recommendation to immediately signpost the complainant to ICE.

Disputes/escalation by the customer

61. Once you have made a special payment decision you should notify the customer of the outcome (unless it was refused and the customer was unaware it was being considered). You can do this by telephone or in writing. Either way, you should advise the customer what to do if they are unhappy with the decision. The customer might wish to challenge a refusal to pay, or dispute the amount paid. In either case, they should be advised to provide their reasons for requesting a review and any supporting evidence/information they think is relevant.

62. It is for the business to determine who should review the decision and how many review tiers are appropriate. However, best practice suggests that a fresh pair of eyes can be helpful in the process. The reviewing officer should look at the case afresh, and complete a new SPEC1. The SPEC1 should include any fresh information from the customer or gathered by the reviewing officer, and provide their view of the maladministration/impact and redress. The customer should be notified of the new decision (which may revise or support the previous decision) and advised what to do next if still dissatisfied.

63. Whilst there are no time limits for requesting a review, if the request is excessively delayed and the original decision has been destroyed in line with data retention (see paragraph 180) then you can't review it. You should refuse to review but signpost to the next tier so ultimately ICE can consider if you were right to refuse in the circumstances.

The role of ICE/PHSO in disputed decisions

64. The final business review should advise the customer how to complain to the ICE if they remain dissatisfied with the special payment decision. You should also advise the customer that any complaint should be made within 6 months of getting the final reply from the business. For ICE's contact details, including their website, please see annex B.

65. If the customer remains dissatisfied after the ICE has concluded an investigation of their complaint, they can ask an MP to take the matter to PHSO. ICE's letter will provide contact details for PHSO advising the customer what to do. It is also worth noting that

although PHSO generally do not take on cases unless ICE has looked at the complaint first, they can make exceptions. PHSO's contact details are provided in annex B.

What to pay - special payment categories

66. There are three main special payment categories:

- Loss of statutory entitlement
- Actual financial loss or costs
- Consolatory payments

67. In legal terms these payments are all known as ex gratia payments because there is no legal requirement to pay them. Finance make a further distinction: they term losses/costs and consolatory payments as ex gratia payments, but categorise loss of statutory entitlement (and some other payments made outwith this scheme – paragraph 147 refers) as extra statutory payments which are recorded by benefit type. See annex G for a table of the account codes allocated by the Finance section.

68. Customers can be awarded financial redress under more than one category. For example, someone who incurred costs as well as being inconvenienced by our maladministration can receive a consolatory payment as well as one for actual financial loss (in practice one payment would be made covering both categories).

Loss of statutory entitlement

69. If someone loses their statutory entitlement to a benefit solely because of our maladministration, you can consider making good that loss by a payment for loss of statutory entitlement (LOSE).

Example:

A customer asked us if they could claim any benefits following the death of their wife. They were incorrectly advised that nothing was available because they were working. Years later, after getting different advice from a friend, they claimed Bereavement Benefit and found they were entitled after all. They asked if the benefit could be backdated and explained they would have claimed three years earlier but for DWP giving them the wrong advice. As a claim can only be backdated for a set period (prescribed in legislation), you could consider a payment for LOSE covering the 'lost benefit' from the point of the mis-advice to the point the benefit could be paid statutorily (provided misdirection is accepted).

Checking statutory entitlement

70. In the first instance, you should check what statutory entitlement the customer does have. It would not be appropriate to make a special payment in respect of a benefit which cannot now be paid due to DWP maladministration if the customer could claim a different benefit. For instance, they might not be entitled to contribution-based Employment and Support Allowance but might be able to claim income-based Employment and Support Allowance. If there is a difference between the two benefits, and the customer is now receiving less than they might have but for the maladministration, you might decide to make a payment for the difference between the two benefits. It would not be lawful to cancel a

current statutory benefit entitlement to make an ongoing award for LOSE; however, a top-up payment might be a suitable remedy.

71. If the customer has no statutory entitlement to a benefit, but would have done but for the maladministration, you can consider an ongoing payment for the loss. However, if they have lost entitlement because the rules have changed, then awarding them ongoing payments for a benefit that would not be available to anyone else claiming at that time might be counter to ministerial intention. In effect, you would be putting them in a more advantageous position than might be appropriate. HM Treasury guidance is clear on this point²: individuals should not be advantaged by the redress. They should be restored, as far as it is possible to do so, to the position they would have been in but for the maladministration.

Example:

A customer would have had entitlement to benefit A on date 1, but didn't claim because of our incorrect advice. Benefit A is then abolished and replaced by benefit B which the person claims at date 2. Benefit B is worth less than benefit A. However people on Benefit A at date 2 are given a transitional entitlement to continue on Benefit A for 12 months. In this example, you can consider giving the person LOSE for Benefit A from date 1 to date 2, and then ongoing top-up payments for the extra amount they would have got by way of transitional entitlement up until the date that entitlement would have ended.

Example:

A customer had entitlement to benefit A at date 1 because of transitional arrangements – benefit A had already been abolished and replaced by benefit B. The customer decided to start work but asked what would happen if the job didn't work out. He was incorrectly told that he would be able to go back onto benefit A. Actually that was not an option – anyone claiming at date 1 or later would have to claim benefit B. He worked for a period then tried to reclaim benefit A only to find out that it was no longer available. We accept that he was given incorrect advice, but the reason he can't have benefit A is because it has been replaced by benefit B. Paying the equivalent of benefit A via LOSE, would put this customer in a better position than anyone else claiming on that date and would be contrary to Treasury advice.

Establishing the loss

72. When establishing the loss, you need to take account of any other benefits being paid. For example, someone who was misadvised about claiming Widowed Parent's Allowance (WPA) and claimed Income Support (IS) instead should only be awarded a payment for loss if WPA exceeded the IS actually paid. Income based benefits provide additional help (for example, help towards the mortgage) which is not available under contribution based benefits. When considering shortfalls, it is worth remembering the

² In [Managing Public Money](#): Annex 4.14, Paragraph A4.14.9 HM Treasury says: 'Where financial remedies are identified as the right approach to service failure, they should be fair, reasonable and proportionate to the damage suffered by those complaining. Financial remedies should not, however, allow recipients to gain a financial advantage compared to what would have happened with no service failure.'

passported help which can be available in means tested benefits (housing benefit, council tax benefit, free prescriptions etc).

Determining the period of loss

73. If the loss relates to a past period, you would need to be sure that the customer satisfied the criteria for the benefit during that period.

Example:

A customer said that he had delayed claiming Income Support (IS) because of misdirection and provided the following details about the alleged misdirection:

- In 1994 he was receiving Incapacity Benefit (IB). He made a claim for Disability Living Allowance (DLA) which was refused. He asked if he could claim IS and was told his IB would exceed any IS entitlement (the IB rate was higher than the standard IS rate).
- He appealed the DLA refusal and the decision was overturned by a Tribunal in 1996. He said he asked about IS but was again advised his income would exceed any IS entitlement. (This was no longer the case – the DLA gave him entitlement to a premium in IS which would make his IS exceed his IB.)
- He claimed IS in 2004 and it was awarded (the DLA gave him entitlement to a severe disability premium).

He said he would have claimed IS from 1994 but for the misdirection. You would need to look at what happened then and whether the advice was appropriate given what was known about his circumstances. You could also look at the second piece of advice (in 1996) and check whether the same conditions applied. In both instances, you would need to be satisfied that the events occurred as the customer described.

Ongoing payments for loss

74. If the loss relates to a future period, and you plan to make ongoing payments for LOSE, you need to be sure that the customer will continue to satisfy the necessary benefit criteria. For example, someone receiving special payments in lieu of Employment and Support Allowance would need to undergo assessments to ensure they satisfy the underlying medical conditions. This is an operational issue, and as such we don't seek to direct how you should ensure the payments remain appropriate. However, suitable case checks should be considered for any ongoing awards you implement. (In practice, the special payment is paid clerically but the case is set up as a credit only case on the system as this ensures the customer gets their NI credits and also sets case controls so checks can be made as appropriate.)

Topping up statutory entitlement

75. If the customer is getting benefit, but this isn't the one he/she would have been receiving but for our maladministration, you can consider making up the difference between the two awards (assuming there is any shortfall) by top-up payments for LOSE. Such cases will require details of both the current benefit and that to which he/she would have been entitled to calculate the top-up. You will also need to periodically check the rates and any underlying entitlement to the previous benefit as appropriate. You should also consider whether the top-up payment should be eroded by annual up-rating of the benefit the

customer is entitled to. This will certainly apply in situations where the top-up is for a benefit that no longer exists.

Example:

A customer would have been entitled to benefit C (£109.50 a week) but for our maladministration. However, he can statutorily receive benefit D which is for a lower amount (£98.60 a week). The weekly top-up is for £10.90 initially. Following up-rating the benefit rate for D changes but benefit C is not available. The new rate for benefit D is £103.50. The top-up is the difference between £109.50 and £103.50 = £6. This will continue to be eroded when benefit D is up-rated until a top-up payment is no longer required.

Delegated limits

One-off payments

76. Whilst the special payment scheme allows for discretionary decisions, there are limits to what you can pay. These are set by CReST. The current limit for a one-off payment is set out in annex C. Any proposals to pay in excess of this amount in LOSE should be referred to CReST for authorisation. (Please see the section on the Administrative Process for details of how to make the submission.) Care should be taken not to raise the customer's expectations before payment has been approved.

Ongoing payments

77. The current limit for weekly on-going payments for LOSE is set out in annex C. Any proposals to pay on-going payments in respect of LOSE which exceed this sum should be referred to CReST for authorisation.

Tax and loss of statutory entitlement payments

78. Payments for LOSE are made in respect of a specific benefit. If that benefit falls to be taxed, so will any payments made in lieu of that benefit.

Actual financial loss or costs

Departmental approach to compensation for extra expenditure or lost income

79. Actual financial loss/costs can be considered where maladministration has resulted in a customer or third party incurring a financial loss (other than benefit), or additional expenditure (costs). Payments are calculated by looking at how much the person has demonstrably lost or what extra costs they have reasonably incurred.

Distinguishing between financial loss and financial disappointment

80. It is important to distinguish between financial loss and financial disappointment. Some customers may be disappointed not to receive something they think, or had been led to believe, they would be entitled to. However, if the customer had no entitlement in the first instance, they cannot be said to have been financially disadvantaged by the law having been properly applied.

Example:

A male customer is advised that on his death his wife would be entitled to receive his State Pension. The advice was incomplete because the customer did not say (and the DWP officer did not ask) that his wife was considerably younger than him. She could only receive his pension once she reached pension age herself. When the customer died his wife asked for his pension to be paid to her. She was told that as she was aged 50 she could not receive the pension yet and Bereavement Benefits were awarded instead. She complained that this was considerably less than she had expected and wanted compensating for the shortfall.

81. In this instance, there was no statutory entitlement to the benefit so the customer's wife cannot be said to have incurred an actual financial loss. She has suffered a financial disappointment. We can only pay compensation for actual financial loss. However, a consolatory payment might be appropriate for the incomplete advice.

82. There may be circumstances when a payment for actual financial loss is appropriate. This would not be to replace the 'lost' benefit, but we could consider loss in the following circumstances: the business has wrongly led a customer to expect benefit or to expect benefit at a higher rate than that to which entitlement actually exists and he or she has reasonably altered their finances to their detriment on the strength of the mis-advice (see paragraph 108 for more details).

What can be treated as an actual financial loss/cost?

83. Claims for actual financial loss/costs may include the following:

Additional costs

Letters, phone calls, faxes, fares and other travel costs

84. If a customer incurs reasonable additional expenses in connection with the resolution of their complaint, a special payment may be made to reimburse those additional costs. (See paragraph 106 for the evidence needed to support a claim for additional expenses.)

85. In deciding whether costs are reasonable, regard is had to such things as when the customer's complaint was fully addressed. If the customer continues to make further, unjustified representations after the point at which their complaint was fully addressed, a special payment would not be made for any further additional costs.

86. It is not necessary for costs to have been incurred through dealing directly with the Department's agencies. It is possible that they may have been incurred as a result of obtaining advice, for example travelling to meet with a welfare rights advisor, or the cost of contacting them by telephone.

Bank charges/fees

87. If Departmental maladministration results in the customer incurring bank charges, reimbursement of the charges should be considered, to place the customer in the position they would have been in had the maladministration not occurred. (See paragraph 106 for the evidence needed to support a claim for additional expenses.) You would need to be

sure a charge has been levied and that it was only incurred because of our error/delay. For example, if the account was already overdrawn prior to our involvement, then a charge might have been made anyway.

Interest on credit cards

88. Similarly, when payment of benefit has been unreasonably delayed due to Departmental maladministration, it may have been necessary for a customer to use a credit card to secure funds. Whilst payment of the benefit arrears may provide full redress, a special payment might be appropriate if the customer has been charged interest because they were unable to pay off the monthly amount when it became due. You would need to see copies of the statement to establish that the interest has only been incurred due to DWP maladministration. If the account was already in arrears or the items purchased were not those that you might reasonably expect to be met from benefit, then you might decide that there is no direct link between the maladministration and the costs. Where loss is established, the special payment should reflect the amount of interest charged by the credit card company.

Accrued mortgage interest

89. When payment of benefit has been delayed due to Departmental maladministration, the customer may have fallen behind with mortgage payments. If the lender charges additional interest or default charges as a result, a special payment may be considered which reflects these charges. Two of the businesses (Jobcentre Plus and The Pension Service) have a standard mortgage interest calculator for determining the interest in such cases. The calculator applies the standard rate for mortgage interest which is used in means-tested benefits (Income Support and Pension Credit). The calculator should be used if the business has maladministered the case and the customer has incurred additional interest charges on their mortgage account as a result. You should ask to see verification of the interest charge, as the lender might have levied a one-off default fee instead, or there might have been no extra interest or charges levied because the mortgage was met by someone else, such as a joint owner. Before determining the required level of redress, you need to check how much of the interest relates to the DWP delay and how much relates to the customer's circumstances which are outwith the delay, eg existing mortgage arrears.

Loss

Loss of earnings

90. Any cases in which a complaint of loss of earnings is judged to be justified should be referred to CReST to determine whether it is necessary to consult HM Treasury. The expectation is that referrals of this nature will be exceptional.

Example:

A self-employed person, who claimed that DWP's pursuit of an overpayment caused a stress related illness that prevented him from working, requested compensation for periods of lost income.

Loss of child maintenance

91. There are several ways in which a delay by the Child Support Agency might cause a parent with care (PWC) to incur a loss of child maintenance. If the Agency delayed issuing a maintenance application form (MAF) to the parent with care, this will in turn delay the issue of the maintenance enquiry form (MEF) to the non resident parent (NRP). In most cases, the start date of the non resident parent's liability to pay maintenance begins with the issue of the MEF. The following examples explain more:

Example:

Unreasonable delay in issue of the MAF

Mrs A requests a MAF on 12 May 2008. The Agency should have issued it/completed the application by telephone by 11 June 2008, but did not do so until 9 July 2008.

The completed form was received on 16 July 2008; the Agency contacted the NRP to tell him about the application on 21 July 2008, which sets the effective date for the maintenance calculation.

It is reasonable to assume that had the Agency not delayed the NRP would have been contacted sooner.

The Agency took 5 days to contact the NRP therefore the earliest possible effective date would be 12 June 2008 (the date following the last day of the waiting period) plus 5 days = 17 June 2008. The period of potential loss to the PWC runs from this date to the day before the actual effective date, 17 June 2008 to 20 July 2008 (34 days).

If the NRP's first liability is assessed as £25 a week Mrs A could have expected to receive £121.43 ($\text{£}25/7 = 3.5714 \times 34 \text{ days}$) from the NRP for the 34 days concerned. This amount would reduce to take account of any voluntary payments of child maintenance received by the PWC during this period.

To establish if a loss was actually incurred, the Agency must be satisfied that the NRP would have complied with the maintenance assessment.

Example:

Unreasonable delay in the issue of a MEF to the NRP

The Agency received a MAF from Mrs D on 28 October 2007. There was no existing court order for child maintenance and no further action was required on the MAF.

The Agency should have sent a MEF or contacted the NRP to inform him of the application by 27 November 2007, but did not issue one until 19 December 2007, setting the effective date for the maintenance calculation.

It is reasonable to assume that had the MEF been issued earlier, the NRP would have become liable for child support maintenance from an earlier date. The period of loss runs from the earliest date the Agency could have set the effective date, 28 November 2007, to the day before the actual effective date, 18 December 2007 (21 days).

If the NRP's first liability was assessed to be £30 a week a total sum of £90.00 ($\text{£}30/7 = 4.2857 \times 21 \text{ days}$) would have been due from the NRP in the 21 days concerned. This amount would reduce to take account of any voluntary payments of child maintenance received by the PWC during this period.

To establish if a loss was actually incurred, the Agency must be satisfied that the NRP would have complied with the maintenance assessment.

Interest losses

Special payments to compensate for any erosion in the value of the money caused by a delay in paying benefit/child maintenance

92. In cases where DWP maladministration has caused a significant delay in paying benefit (either on a statutory or ex gratia basis) or child maintenance, it may be appropriate for the special payment to include an additional element in recognition that the value of the money has been eroded because of the passage of time. For consistency in determining how much to pay, we will calculate the additional element of the special payment as if it were simple interest and reference HM Revenue and Custom's (HMRC) **repayment** interest rate (<http://www.hmrc.gov.uk/rates/interest-late-pay.htm>), as recommended in Annex 4.14 paragraph 11 in the Treasury guidance '[Managing Public Money](#)'.

93. Consideration of a special payment in respect of the loss in monetary value caused by delay will only be triggered when:

- The delay in paying arrears was the result of DWP maladministration (see paragraphs 29 – 43 for help in deciding if a delay was maladministrative. Seek advice from CReST if you are uncertain of whether this is the case); and
- The delay in the customer receiving their benefit/maintenance is one calendar year or more; and
- The interest payment amounts to £10 or more.

Example:

A customer applies for benefit in April 2010. The application is registered but then mislaid. The customer contacts us three months later and is advised to reapply. Again the form is noted as received but is misfiled. It is found six months later and finally processed in May 2011. Benefit arrears of £3,459 are due from April 2010 to May 2011. As the delay was DWP's fault and it exceeds one calendar year, a special payment is calculated as if it were simple interest, using HMRC's repayment rate, as follows:

Year	Amount	From	To	Interest rate	Interest
2010-2011	£3192.92	06/04/2010	05/04/2011	0.5%	£15.96
		06/04/2011	05/04/2012	0.5%	£ 1.13
2011-2012	£266.08	06/04/2011	01/05/2011	0.5%	£ 0.09
Total amount	£3459.00			Total interest	£17.18

As the special payment amounts to £10 or more, payment can be made.

Example:

The Department is notified in May 2009 that a customer has been discharged from hospital. They are out of hospital between May and August 2009. Arrears of benefit are due but because of an oversight, they are not paid until 2012. Interest can be considered because we were told about the change but failed to act upon it. The customer has lost the use of the money for a period in excess of one year. As the delay was DWP's fault and it exceeds one calendar year, a special payment is calculated as if it were simple interest, using HMRC's repayment rate, as follows:

Year	Amount	From	To	Interest rate	Interest
2009-2010	£953.33	01/05/2009	28/09/2009	0%	£0.00
		29/09/2009	05/04/2010	0.5%	£2.47
		06/04/2010	05/04/2011	0.5%	£4.77
		06/04/2011	05/04/2012	0.5%	£4.78
		06/04/2012	01/05/2012	0.5%	£0.34
2010-2011	£0.00	06/04/2010	01/05/2012	0.5%	£0.00
2011-2012	£0.00	06/04/2011	01/05/2012	0.5%	£0.00
2012-2013	£0.00	06/04/2012	01/05/2012	0.5%	£0.00

Total amount £953.33

Total interest £12.36

As the special payment amounts to £10 or more, payment can be made.

94. If you identify a case which does not meet the criteria specified in paragraph 93, but nevertheless merits a special payment for the delay, you can consider a consolatory payment or a special payment for actual financial loss if a loss can be demonstrated. Other types of loss are explored in the next two paragraphs.

Special payments to compensate for a loss of bank/building society interest due to a delay in paying benefit/child maintenance

95. If a customer can demonstrate that they have lost interest due to a delay in paying benefit, you can consider a special payment to reimburse the loss. You will need to consider if the benefit is such that they could and would have set it to one side to earn interest as well as request proof that they have an interest-bearing savings account. If the delay was such that you had already awarded a payment in respect of any loss in the value of the money you would need to take this into account. For example, if £15.30 had been paid to compensate for any erosion in monetary value, but the customer could demonstrate that he would have earned interest of £30.30 had benefit been paid into his account at the appropriate time, you could consider a further payment of £15.00 for loss.

Special payments to compensate for a loss of bank/building society interest due to funds being withdrawn from interest-bearing accounts

96. If a customer has withdrawn funds from an interest-bearing account to meet living expenses because of a delay in paying benefit, you can consider a special payment to compensate for their loss in interest. Again, you should ask for evidence of the withdrawal and the interest rate which applied to that account. You would also need to be satisfied that

the withdrawal was made solely due to the delay in paying the benefit and not to meet an un-associated expenditure. Similarly if the amount of the withdrawal exceeded the amount of the benefit that should have been paid, you may wish to restrict the loss. If the delay was such that you had already awarded a payment in respect of any loss in the value of the money you would need to take this into account. See paragraph 95 for an example.

Other losses / costs

Savings policies – early surrender

97. A customer suffering financial hardship as a result of Departmental maladministration may find it necessary to surrender a savings policy (eg endowment or an ISA) before the maturity date. A customer cashing in a savings policy receives the market value at the time of surrender, and on this basis cannot be said to have suffered a financial loss.

98. Whilst the customer may have been put to the inconvenience of having to cash in the policy as a result of Departmental maladministration, a special payment should **not** be made in respect of the difference between the surrender value paid to the customer and the expected value of the policy at the maturity date. This is on the basis that there can be no certainty that the customer would have maintained regular premium payments, or that the policy would have continued to grow in accordance with forecasts.

99. However, there may be other circumstances when the customer can demonstrate that they have suffered a financial loss as a result of the early surrender and if this is as a direct result of Departmental maladministration, that loss may be met by way of a special payment. As with all special payment decisions, the objective features of the case should be fully considered.

Professional fees

100. The Department's businesses have in place a free and accessible system for resolving complaints, including provision for the complaint to be escalated to a senior manager if necessary. If a customer remains dissatisfied with the response to their complaint they can ask ICE (a free and independent complaints resolution and examination service) to consider their complaint. Additionally, Parliament has provided for the Office of the Parliamentary and Health Service Ombudsman, who can consider complaints referred by Members of Parliament.

101. Given the existence of a clear and structured process for the escalation of complaints of maladministration, coupled with the existence of other sources of advice which can be obtained free of charge, such as through a Citizens Advice Bureau (CAB) or their MP, it should not be necessary for customers to engage professional help in order to resolve complaints.

102. Customers who choose to engage professional help (for example a solicitor to assist in the progression of their complaint) should not do so with the expectation that such fees will be met by the Department.

Circumstances in which professional fees may be met

103. The reimbursement of professional fees is only considered where maladministration has occurred and the engagement of such help was necessary in seeking to resolve a justified complaint with the relevant agency. Each application for reimbursement of professional fees should be judged on its own merits, in the light of the circumstances of the case.

104. When deciding whether to award a special payment in respect of professional fees, consideration should be given to:

- the circumstances which led to the engagement of professional services;
- the complexity of the subject matter;
- the relevance of the professional's expertise in resolving the matter (for example, it might be reasonable to engage a solicitor to help with a legal issue but an accountant's expertise would have less relevance/value);
- the experience of the customer in dealing with such matters;
- the availability of free advice (such as an MP or CAB);
- the availability of free complaint investigation services (ICE and PHSO);
- whether the matter would have been resolved within a reasonable time-scale, had the customer not sought professional assistance.

Example of a case where professional fees can be paid:

Mrs G sells her home and moves into residential care. Her state pension payments cease at this point, in error. Mrs G does not notice the shortfall and when she dies, she is owed a substantial sum in arrears. Her executor (a solicitor) notices that she had no income and queries this with the department. It takes nearly a year, and a considerable number of letters/calls from the solicitor before the statutory arrears are paid to the estate. The estate incurs additional costs from the solicitor for the effort involved in rectifying our maladministration. As none of this should have been necessary had Mrs G's case been dealt with correctly, we could consider a special payment to reimburse the next of kin these particular fees.

Example of a case where professional fees will not be paid:

Mrs H has a complaint about the Child Support Agency because the non-resident parent has not been meeting his child maintenance liability. She asks a family friend, an accountant, to complain on her behalf. The accountant subsequently sends a bill to the Agency for his services. There are no extenuating circumstances which prevented Mrs H from making a complaint herself or from seeking free help. The accountant has charged for the time he spent contacting the Agency at the same rate he would charge for his expertise as an accountant. His expertise had no bearing on the complaint resolution.

105. If a decision is made to reimburse professional fees, only an amount adjudged by the Department to be reasonable will be allowed. In practice, CReST will provide that overview. If you have a case which you think should be paid, please refer it to us to consider before payment is made. (Details about how to make a referral are covered in The Administrative Process.)

Evidence to support a claim for additional expenses

106. In considering the type and amount of evidence required to substantiate the claim, regard will be had to the nature and size of the expense involved. Where expenses are small then a reasonable estimate may be appropriate (for example, routine telephone calls, postage costs and photocopying or travel costs). However, larger sums should normally be supported by some evidence and bank statements should be checked before making any payment in respect of bank charges.

What to pay

107. The emphasis should be on trying to restore the customer to the position they would have been in had the maladministration not occurred. In most cases of actual financial loss, the amounts involved will be simple to identify and verify, for example bank charges incurred due to a failure to make a timely payment of benefit into a customer's bank or building society account.

Customer has altered his or her circumstances as a direct result of incorrect Departmental advice

108. If a customer alters his or her circumstances to their detriment as a direct result of incorrect Departmental advice, a special payment should be considered for the resulting actual financial loss. In doing so, it will be necessary first to consider whether, in the circumstances, it was reasonable for the customer to have accepted in good faith and to have acted upon, the incorrect information provided. If it was not reasonable then a special payment may not be appropriate, as it will be the person's failure to check first, that allowed matters to progress in the way they did. The circumstances of the case should be carefully examined to determine appropriate redress, based on the most cost effective means of resolving the debt. The options for which include:

- making continuing payments if, for example, the customer has taken on a regular financial commitment; or
- making a lump-sum payment to clear any debt incurred as a result of incorrect advice.

State Pension forecasts

109. Care should be exercised when a request for a special payment is received in respect of an incorrect (erroneous) State Pension forecast. A forecast is only a prediction and is **not** a guarantee of payment.

Forecast clearly incorrect in view of the information held at the time of its issue

110. A special payment can only be considered in cases where:
- the state pension forecast made was clearly erroneous in view of information held at the time; and
 - the customer suffered a demonstrable financial loss by acting on the information.

Customer enters into a financial commitment as a result of an erroneous forecast

111. When a customer has entered into a financial commitment as a result of an erroneous state pension forecast, a special payment should be considered in accordance with guidance at paragraph entitled "*Customer has altered his or her circumstances as a direct result of incorrect Departmental advice*" (paragraph 108).

Customer stops work following receipt of an erroneous forecast

112. Exceptionally, a special payment may be considered when a customer has stopped work following receipt of an erroneous state pension forecast. If a special payment is deemed appropriate, it should be calculated on the additional amount of pension that would have been due had the customer continued to pay national insurance (NI) contributions on the earnings which they have forgone.

Deciding individual cases

113. An on-going special payment award must not be made to top-up the customer's pension to the forecasted amount unless, in very exceptional circumstances, it is warranted under the terms set out in paragraph 108 (*customer has altered his or her circumstances as a direct result of incorrect Departmental advice*) and making an on-going top-up award addresses the matter better than covering the financial commitment.

Additional NI contributions paid

114. If, following incorrect official advice, a customer paid additional NI contributions and receives less benefit than they were led to expect, then consideration should be given to:

- seeking HMRC support in remedying the injustice by refunding the NI contributions;
- a consolatory payment in respect of the impact caused (for example, any inconvenience);
- a payment for any losses/costs they can demonstrate they incurred as a result of the poor advice.

Additional NI contributions paid by the customer on own initiative, in expectation of a higher rate of benefit than he or she eventually received

115. It will not generally be appropriate to make an *ex gratia* payment or a refund of NI contributions, if the customer has, on their own initiative, paid additional contributions in expectation of a higher rate of benefit than they eventually received. All such compensation claims should be referred to the National Insurance Contributions Office of HMRC.

Delegated limits

One-off payments

116. Whilst the special payment scheme allows for discretionary decisions, there are limits to what you can pay. These are set by CReST. The current limit for a one-off payment is set out in annex C. Any proposals to pay in excess of this amount for costs or actual financial loss should be referred to CReST for authorisation. (Please see the section called the Administrative Process for details of how to make the submission.) Care should be taken not to raise the customer's expectations before payment has been approved.

Ongoing payments

117. The current limit for weekly on-going payments is set out in annex C. Any proposals to pay on-going payments in respect of actual financial loss which exceed this sum should be referred to CReST for authorisation.

Tax and ex gratia payments for losses or costs

118. Ex gratia payments in respect of losses or costs are not taxable.

Consolatory payments

Overview

119. It should be remembered that all dealings with the Department, regardless of whether or not errors occur, can be frustrating, inconvenient and sometimes stressful. It is also natural for customers to feel annoyed, angry or upset at mistakes, even relatively minor ones. This background of general inconvenience and frustration is not the context in which the Department would normally consider a consolatory payment. The Department's policy is to make a consolatory payment where its maladministration has had a serious and significant impact on the customer.

120. A consolatory payment may be considered in circumstances, where a customer, or a third party, has suffered injustice or hardship arising from Departmental maladministration. The customer does not have to demonstrate that he or she suffered any financial loss. A consolatory payment should be considered regardless of whether or not any other form of redress payment has been made.

121. It is important to consider how the life of the customer was affected. To aid this, we have detailed some possible impacts, but this is not to exclude others which do not readily fit within these headings. The payment should be considered 'in the round' rather than as separate amounts under each heading. It is the overall impact that you are seeking to address. Three of the most likely impacts of the maladministration are:

- *gross inconvenience* - that is, serious trouble, difficulty or stress (short of a significant impact on their health) which goes beyond the general trouble and annoyance expected when dealing with a mistake by a Government Department (see paragraph 122);
- *gross embarrassment, humiliation or unnecessary personal intrusion* (see paragraph 123); and/or
- a significant impact on a customer's physical or mental health - referred to as *severe distress* (see paragraph 124).

What constitutes gross inconvenience?

122. As a *guide*, the customer may have experienced:

- frequent and/or unnecessary disruptions to payments;
- lengthy delays;
- numerous mistakes/errors (some of which might have happened more than once);
- unwarranted and/or repetitive requests for the same information;
- loss of personal information;

- excessive use of their time (where there is no actual financial loss – as this comes within its own separate category);
- mis-handling of their complaints (sometimes referred to as ‘botheration’) including failing to consider redress at the earliest opportunity.

This list is not exhaustive.

What constitutes gross embarrassment?

123. Gross embarrassment, humiliation or unnecessary personal intrusion is best illustrated through some examples:

Examples:

- wrongful arrest;
- wilful misuse of information or position by an officer of the Department;
- wrongful issue of a summons;
- disclosure of sensitive information to a third party;
- unnecessary gathering of personal information;
- insensitive information gathering.

This list is not exhaustive.

Example:

On 13 February 2012, the Child Support Agency received a maintenance application form from parent with care Mrs J. Mrs J provided personal details of the non resident parent. The Agency incorrectly matched these details to Mr R on the Customer Information Service and sent him a maintenance enquiry form (MEF). On receipt of the form Mr R disputed that he was the father of the child as he did not know Mrs J. The Agency contacted Mrs J to obtain further details leading to the Agency tracing Mr X as the correct father. Mr R suffered gross embarrassment after being wrongly identified as the non resident parent and a special payment of £100 was paid in recognition of this.

What constitutes severe distress?

124. Severe distress should be distinguished from general stress, which is perhaps best considered as gross inconvenience. Severe distress indicates a stronger impact and therefore might lead to a higher consolatory payment. For example, a customer may claim to be upset, angry or distressed as a result of maladministration but unless their health/well-being has been seriously and demonstrably affected, you might decide that the impact was no greater than inconvenience and award a lower amount.

125. A payment which takes into account severe distress should only be considered when there has been a significant deterioration in a customer’s physical or mental health as a direct result of Departmental maladministration. In very rare cases, the severe distress

may be experienced by another person, for example, a spouse, as well as, or rather than by, the customer.

Is there objective evidence of the impact?

126. The customer should normally be asked to provide objective evidence of the impact on their physical and/or mental health. This may, for example, take the form of a report from a GP or evidence from an employer that the customer has been unable to work as a direct result of health problems arising from Departmental maladministration. Please note that other forms of objective evidence can also be accepted for consideration.

Cases where objective evidence may not be needed

127. In those cases where it is self-evident that Departmental maladministration would have caused severe distress, it may not be necessary to obtain objective evidence.

Example:

An individual may have been incorrectly informed of the death of a close family member.

128. Nevertheless, it may be to the customer's advantage to obtain evidence of the impact of the maladministration to ensure that any award adequately reflects the circumstances of their case.

What is the degree or impact of the maladministration?

129. Poor service will impact upon the health of different people to different extents. For special payment purposes, it is the degree and duration of the impact that is normally more important than the scale of the error. The more serious the impact, the greater the payment is likely to be, subject to the following paragraphs.

Are there factors, other than Departmental maladministration affecting the customer's health?

130. There will be cases where the objective evidence indicates that there have been other factors, such as personal problems, that have affected the customer's health. It will be necessary to decide the relative importance of these other factors when reaching a decision on the special payment.

Is there a pre-existing health condition?

131. In many cases the customer will have a pre-existing health condition that has been affected by Departmental maladministration. This does not preclude consideration of payment. The maladministration may have caused a delay in recovery from illness or worsened the condition. In such cases, it will be necessary to ascertain the extent to which the maladministration has affected the pre-existing condition, when deciding whether a special payment is due and if so, how much should be awarded. In doing so, the state of the customer's health prior to and immediately after the maladministration should be established. Consideration should also be given to the likelihood of their health improving once action has been taken to provide appropriate redress.

What is the likely duration of the impact?

132. Consideration needs to be given to the duration of any impact arising from maladministration, on a case by case basis.

Example:

An incident in which personal information is mistakenly disclosed to an unknown third party as a result of Departmental maladministration, but which is promptly discovered, and quickly rectified, may be of limited duration in terms of impact. Alternatively, the disclosure of personal information to a third party, who is known to the individual, may have an impact of far greater duration.

Delay in considering a special payment

133. Redress should be considered at the earliest opportunity. If we delay we might give the customer the impression that we don't care or that we can't even get that right. As such, if we failed to consider redress at the outset, we should take account of our delay when we do consider making an award.

Payment 'in the round'

134. Having considered what happened, what should have happened and how this affected the customer in terms of any inconvenience, embarrassment or impact on their health, you should consider a payment which reflects the full impact of our maladministration on the individual.

Delegated limit

135. Consolatory payments will usually range from £25 to £500, but bigger payments may be made in appropriate circumstances. The current delegated limits, determined by CReST, are set out in annex C. If the business wants to pay a consolatory payment that exceeds the delegated limit, they should refer the case to CReST for consideration/agreement. (Please see the section on the Administrative Process for details about how to make the submission.)

Tax and consolatory payments

136. Special payments in the form of consolatory payments are not taxable.

Child Maintenance Group Payments

137. In addition to the payments described in this section, there are further categories of special payment which are specific to the Child Support Agency (the customer facing business for Child Maintenance Group). Please see annex H for details.

Unusual Cases

Novel and contentious cases: alerting Ministers

138. It may be appropriate for Ministers and senior officials to be alerted at an early stage to any difficult or controversial case. By which we mean a case which is highly likely to attract unwelcome publicity from the media or PHSO. Such cases are exceptional. It is important, therefore, to let CReST have written details of such cases without delay so that Ministers and appropriate officials can be briefed. Details on how to make a submission to CReST can be found in the Administrative Process.

Notifying Treasury

139. Where an issue or proposed solution could have implications for other Departments, Treasury must be notified. In a situation of this nature, CReST will liaise with Treasury on the Department's behalf.

Liaison with Solicitors

140. Where it is necessary for special payment teams to liaise with solicitors in DWP Legal Services (or solicitors at the Treasury (TSol) who deal with litigation cases) on a compensation issue, special payment teams must simultaneously copy correspondence to CReST.

Threat of legal action

141. Where correspondence threatening legal action is received from a solicitor and the solicitor quotes the law in respect of their client's claim with a time limit for reply, solicitors should be notified **immediately**, and their advice sought regarding future handling. **Do not** issue a full reply to private practice solicitors or welfare rights organisations without having done so.

Legal action in the form of a court claim: action to be taken

142. It is not necessary to refer cases to solicitors solely on the basis that the customer has instructed solicitors to seek compensation on his or her behalf. However, if legal action has been initiated in the form of any documents from a court, seek legal advice **immediately**.

143. There is a time limit for responding to a court claim and any delay may compromise the Department's position. Delay could result in a judgement in favour of the customer, where an ex gratia payment might otherwise not have been appropriate. When a court claim has been issued, papers should be sent without delay to solicitors in TSol with copy papers being sent to CReST.

Special exercises

Role of DWP policy and operational sections in special exercises

144. Special exercises are set up to identify customers affected by a particular error and provide a remedy. The following might result in a special exercise:

- A systemic failure which affects a number of similar cases;
- Administrative delays which affect a number of cases following the introduction of new legislation;
- Defective legislation ie legislation which does not reflect the intentions of Ministers and this adversely affects customers.

145. The decision to set up a special exercise will fall to the policy/operational team with responsibility for the benefit affected. CReST is not responsible for setting up a special exercise or seeking permission from Treasury (when that is necessary) to make payments as part of that exercise. However, CReST can provide relevant policy and operational sections with the following support:

- advice on policy in respect of special payments to help officials determine whether maladministration has occurred;
- engaging in discussions to ensure that any proposals for redress are appropriate and defensible (special payments under this scheme would only be appropriate if maladministration is identified); and
- quality assuring documents prepared for Ministers/Treasury, when permission for a special exercise is being sought.

Extra-statutory payments in cases where there has been no maladministration

146. If there has been no departmental maladministration then payments under our scheme would not be appropriate. However, officials can seek Treasury approval to make extra-statutory payments. More information about Treasury consents is set out in [Managing Public Money](#) (para 2.3). Generally these payments are made whilst corrective legislation is put in place and cease when payments can be made statutorily. The Treasury ([Managing Public Money](#) Annex A4.14.6) describes them as follows: 'When a pattern develops and a number of cases raising similar points need to be dealt with, it may make sense to develop an extra-statutory scheme. If any such scheme seems likely to persist the organisation concerned should consider whether to bring forward legislation to set it on a statutory footing.' Even though such payments would not be in respect of maladministration, for accounting purposes, our team will still collate statistical details. (See the section on The Administrative Process for details.)

147. Payments of social security benefits are made by DWP under a statutory framework which consists of Acts of Parliament, orders and regulations. "Extra-statutory payments" are payments which are made outside this statutory framework. That is, there is no legal entitlement to the benefit but Ministers/Treasury agree that payments can be made. They therefore go beyond the social security benefits to which people are entitled. However extra-statutory payments still have to be consistent with the broad intention of the statutory framework if they are to be lawful.

Example of extra-statutory payments:

In making a change to the benefit legislation involving housing costs, one group of people were inadvertently omitted and could not benefit from the change. The policy section made the decision that the omission was not maladministrative after consulting CReST. Ministers agreed to amend the legislation and to make extra-statutory provision to put this group of people on a par with others (subject to Treasury agreement) until the new legislation was in place. A special exercise was set up to identify the cases and make the extra-statutory

payments on an on-going basis until the legislation could be amended to include them statutorily. Once the new legislation came into force the extra-statutory payments ceased and statutory benefit payments took their place.

Offsetting amounts against overpayments or overprovision of benefit

148. Financial redress may be appropriate in cases where there is either an outstanding overpayment or overprovision of benefit.

- An overpayment of benefit results from a customer error or failure to disclose information (recoverable).
- An overprovision of benefit results from a Departmental error, for example, a failure to act upon information received (generally non-recoverable).

149. The decision on whether financial redress is appropriate should not be influenced by the existence of an overpayment or overprovision. However, if you are considering a special payment for maladministration that has also resulted in the customer being paid more benefit than they were due, you can take account of that financial advantage in your decision. This is known as considering 'in the round' because you look at all the circumstances. You would decide if a special payment is merited for the maladministration identified but, if the customer has financially gained from the poor service by receiving more benefit than they should, you can decide not to make a special payment or, in the case of a recoverable overpayment (or more rarely a recoverable overprovision) you could offset the special payment against the overpayment.

Example:

A customer has been overpaid benefit as a result of a Departmental error, which has continued over a period of years. He had no reason to suspect that he was not receiving the correct amount and after being advised that we need to reduce his benefit to the correct amount he complains about the inconvenience and stress this has caused. A consolatory payment can be considered but you might decide that it would be reasonable not to pay a further sum on top of the £000s he has already received incorrectly (which will not be recovered).

Considering the deduction of overpaid or overprovided benefit from a special payment

150. There are two basic guidelines that should be followed when considering a deduction of overpaid or overprovided benefit from a special payment:

- any small overpayment or overprovision of benefit (currently set by Debt Management at £65 or less) should be ignored;
- only overpayments or overprovisions that have been notified to the customer³ should be deducted from the special payment.

³ Customers are notified of the overpayment/overprovision irrespective of the decision on recoverability.

Circumstances when deduction from a special payment should not be made

151. An overpayment or overprovision of benefit should not be deducted from a special payment where this would leave the person with an outstanding debt that arose because of maladministration on the part of the Department.

Example:

A customer has been overpaid benefit as a result of a Departmental error, which has continued over a period of years. He had no reason to suspect that he was not receiving the correct amount and made financial commitments based on his benefit amount. When the error was discovered, and benefit was reduced back to the actual entitlement, the customer advised that he was now left with a debt for a car loan which he could no longer meet. As he had altered his circumstances as a result of our maladministration (see paragraph 108) a special payment can be considered for the loan costs. If we were to offset the overprovision with the special payment, the customer would still be left with the debt.

152. Unless the circumstances in paragraph 149 apply (that is, the maladministration has also resulted in a financial advantage) no recovery should be made from:

- a consolatory payment; or
- a payment for actual financial loss or costs in cases where a customer is in receipt of an income-related benefit.

Alternative arrangements

153. If, exceptionally, alternative arrangements are proposed on a particular case, CReST should be consulted without delay. For instance, you have decided to make a special payment for maladministration that occurred recently, but are also aware that an overpayment occurred several years earlier and has yet to be fully recovered.

Recovering an overpaid special payment

154. If a special payment is overpaid in error, recovery should be requested from the customer under a common law right of restitution. If you would like more information about this, please contact DWP Finance.

Example:

The Department intended to pay a customer a £100 consolatory payment (and wrote to tell her this) but inadvertently paid her £10,000. After seeking legal advice, we wrote to ask her to repay the sum on the basis that she would have known it was an error. She agreed to repay.

Death of a customer

155. Special payments are intended to provide redress to the individual who experienced the injustice or hardship arising from the maladministration. If the customer

has died, it is no longer possible to provide them with redress. However, exceptionally, in the event that:

- we were aware of the maladministration; and
- we were aware of the need to pay compensation for the financial loss; and
- we had started the process to make good the loss, *we will complete that process.*

Maladministration and need for compensation identified prior to the death of the customer

156. If the circumstances in paragraph 155 apply, then the special payment should be issued to the person dealing with the deceased person's affairs. The payment will reflect the financial impact of the maladministration on the customer (that is, any loss of statutory entitlement, or other losses/costs).

Maladministration and need for compensation identified after the customer's death

157. If the maladministration and need for redress was not identified until after the customer's death a special payment cannot be made. This is because it was the customer who experienced the injustice/hardship and it is no longer possible to provide them with redress.

Next of kin or a third party submits a request for a special payment in respect of losses or costs

158. If the next of kin or a third party (for example a friend of the deceased person) submits a request for compensation in respect of the deceased customer's case and the criteria in paragraph 155 do not apply, a special payment should be refused. This is for the same reason outlined in paragraph 157 above.

159. If the next of kin or a third party submits a request for compensation *in their own right* a special payment for loss can be considered in the following circumstances:

- he or she has suffered an actual financial loss;
- that loss was incurred because he or she helped support the deceased person; and
- such support was offered because benefit to which the deceased person was entitled had not been paid because of maladministration.

160. If you decide to make an award for loss in accordance with the circumstances in paragraph 159, please refer the case to CReST where consideration will be given to the individual circumstances of each case and to any objective evidence that has been provided.

161. If the next of kin or a third party submits a request for compensation *in their own right* for any other reason, please refer it to CReST to consider the individual circumstances. Redress in these cases should always be based on the actual financial loss suffered by the next of kin or third party, rather than that suffered by the deceased person.

Next of kin or a third party submits a request for a consolatory payment

162. In addition, the next of kin or a third party may request a consolatory payment because of their personal suffering (rather than that suffered by the deceased person) as a

result of the Department's maladministration. Again, if you decide to make an award, please refer the case to CReST to consider prior to payment. Please take care not to raise the individual's expectations before the team has seen the case. Details of how to make a submission are set out in the next section.

Administrative Process

Overview

163. Detailed below are the administrative procedures to be followed when processing questions of redress, authorising payments and completing financial returns. Sample forms and paragraphs for use in letters are included as appendices. The business may wish to produce their own more detailed administrative instructions for staff handling special payments for their customers, to enable them to fully satisfy the requirements of this guidance.

Authorising special payments and test checks

164. The authority to make special payments has been delegated to the Department (CReST) by the Treasury. We have delegated authority to the business to make special payments subject to the limits outlined in Annex C. If you want to make a payment which will exceed the delegated limits, you must submit the case to us for authorisation. (We explain how to submit a case to us next.) If we refuse to authorise the payment and you disagree with our reasoning you can follow the escalation process outlined in paragraph 60.

165. We do not specify who (what grade of officer) should authorise special payments within the business or what percentage of cases should be test checked as we consider these to be business/Finance decisions. From time to time CReST will ask the business to supply a sample of decisions for checking so we can see that the special payment policy is being applied appropriately.

Preparing cases for submission to the Complaints, Redress and Stewardship Team

Advice cases

166. If you would like some advice about a case, you can do this without a formal submission, by telephoning the team or sending us a short email. However, our answer will depend on what you tell us about the case as we have no access to business records/systems. If you want a robust answer, based on the facts, you should make a formal submission.

Optional referrals:

- Complex cases which need additional guidance;
- Difficult decisions (eg balance of probabilities) where you are unsure you are applying the guidance correctly and would like our view.

Required referrals:

- Loss of earnings (if you intend paying);
- Professional fees (if you intend paying);
- Payments to next of kin (if you intend paying);

- Cases likely to attract adverse publicity which might need ministerial briefing;
- Cases where the impact spreads beyond our Department, which might need Treasury involvement;
- Special exercise cases where maladministration needs to be determined;
- Non standard recoveries of an overpayment or overprovision from a special payment.

Copy to CReST for information:

- Cases requiring DWP/Treasury legal action/advice.

Authorisation cases

167. Cases which exceed the delegated limits set out in annex C must be submitted to CReST for authorisation. Staff cases where a consolatory payment is proposed must also be referred to CReST for authorisation. This is despite the fact that special payments to staff are covered in the guidance provided by [Finance](#).

Escalations

168. If you wish to escalate a case because you are unhappy with the advice CReST provided or their refusal to authorise a payment, please follow the guidance in paragraph 60.

Presentation of the case

169. It is important that information is clearly constructed and presented. This should help CReST assimilate what are often complex issues and reduce the time needed to prepare cases should referral to other units be necessary, for example, to DWP or Treasury Legal Services.

Cover document

170. All requests for advice/authorisation should be covered by a referral proforma, a copy of which is attached at Annex I. Each referral requires authorisation by the Team Leader.

The submission

171. Requests for advice/authorisation/escalation should include a copy of the SPEC1, which should contain all the relevant information CReST needs. In the event that a SPEC1 has not been prepared, please provide:

- a summary of the events surrounding the case to date, including a description of identified maladministration;
- details of any redress which has already been provided/offered;
- if appropriate, a copy of any draft PHSO or ICE report on the case (or other relevant correspondence from PHSO or ICE where a draft report has not been received);
- details of the specific advice being sought;
- your proposal for financial redress; or
- your reasons for believing payment should not be made;
- explanations for any jargon, technical terms or abbreviations common to your area of work or to the administration of a particular benefit which have been used in the

- submission;
- if appropriate, any information which supports the decision you want to make. For example, relevant guidance, leaflets, a note of any relevant legislation or other advisory documents referred to in the submission.

Cases involving a previous decision from CReST

172. In cases where CReST has already offered a view/refused a payment, please include details of that decision and your reasons for re-submitting the case, along with any fresh information to support your request. For example, answers to any questions CReST asked.

Insufficient information

173. If we consider that there are gaps in the information and that it is not feasible to offer a view until these are provided, we will write to you detailing what else we need to know. If you do not have this information, you might have to approach an expert for the answer. For example, if our query relates to a change in the benefit legislation, you might need to approach the policy team with responsibility for that benefit to get a definitive view.

CReST's reply

174. CReST will reply to a formal submission in writing, and we will explain what information we took into account in: providing the advice; deciding whether or not to authorise the payment; or responding to the escalation. If you have any concerns about the reply, please talk to us in the first instance, or if this does not resolve matters, use the escalation process outlined in paragraph 60.

Recording and accounting for special payments

175. The Treasury ([Managing Public Money](#) Annex A4.13.7) says that special payments need to be properly justified with particular emphasis on value for money since there is no legal liability for making them. Our justification for making a payment in a customer case is recorded on the SPEC1. In addition to this requirement, there are finance/accounting requirements. Treasury stipulate that special payment expenditure is brought to Parliament's attention through a note in the organisation's Resource Accounts ([Managing Public Money](#) Annex A4.13.16 refers). A separate note is needed if an individual payment or a group of payments exceed £300,000. Annex A4.14.7 also asks departments to include summary information about special payments arising from maladministration in their Annual Reports.

Special Payment Officers role

176. To meet these requirements, special payment officers must ensure that:

- Decisions are appropriately and fully recorded on the SPEC1;
- Payments are recorded on Resource Management (RM) under the appropriate account/benefit code (see annex G);
- Accurate statistical returns are made to CReST;
- Documents/records are retained in line with [Finance](#) and our [data retention policies](#) (see paragraph 180).

Finance role

177. Finance is responsible for reporting special payment expenditure in the Resource Accounts. Special payments include: extra-contractual payments; extra-statutory or extra-regulatory payments; compensatory payments (eg personal injuries to civil servants); special severance payments; and ex gratia payments. Most customer special payments will be recorded under ex gratia payments but some might fall under the extra-statutory payments. Finance derive the information from Resource Management (RM), provided the correct account codes are used. See Annex G for the codes to use. Special Exercise teams report expenditure on their individual exercise to Finance separately. Finance will include details of the exercise and the payments made if they total £300,000. Finance also use the RM data to inform HMRC's White Paper about National Insurance expenditure as the account codes show which payments were made in relation to contribution based benefits.

CReST role

178. CReST collate the special payment statistics provided by each business area to produce an annual figure for DWP. Those that relate to maladministration are reported each year in the Departmental Report. CReST hold details of the total special payments by business area and for DWP as a whole. This information is used in PQ and FOI responses and for briefing purposes.

179. For accounting purposes, expenditure on special payments is charged to the appropriate Departmental Vote(s) as follows:

Annually Managed Expenditure (AME)

- all special payments made in respect of loss of statutory entitlement are charged to annually managed expenditure (AME), provided to cover the Department's programmed benefit expenditure.

Departmental Expenditure Limit (DEL)

- all special payments in respect of actual financial loss (including payments in respect of interest) or costs and consolatory payments are charged to the departmental expenditure limit (DEL), provided for administering the DWP work programmes. Expenditure should be posted to the appropriate business area cost centre on RM system.

Document retention periods

180. There are two sets of guidance which relate to the retention of special payment documentation. Finance requires you to keep details of special payment expenditure to support any payments made via RM. The retention period is listed in the [Finance Managers Guide](#) under RM forms – it is currently 6 years from the date of payment. Finance asks that you keep the special payment decision and the relevant RM form. Any supporting documents are covered by CReST's guidance, as outlined in paragraph 181.

181. CReST guidance applies to the supporting documents in payment cases and the decision and supporting documents in cases where a payment was refused. You should

keep these documents for 14 months from the date of the decision. If the decision is subsequently reviewed, or is the subject of a complaint or overpayment, the file should be treated as an exception case. This means it must not be marked for destruction until 14 months after the specialist action has ceased. [The Benefits Document and Data Retention Guide](#) (paragraphs 2.16 & 2.18) provides more details.

Liaison between special payments teams

182. Financial redress for maladministration is a corporate issue and its operation should be transparent to the customer. Customers should expect to receive a seamless service, which provides them with a swift, reasoned response to any request/referral for consideration of financial redress. However, special payment teams may receive complaints, which, in addition to the benefit they deal with, involves a complaint about another benefit, about which they do not possess the necessary expertise to determine the case. In such cases, it is important that the team liase with the special payments team that handles complaints about the other benefit.

183. Where misdirection is alleged, the matter must be considered and determined by the business area which stands accused of misleading the customer, as only they can say whether the allegation seems well founded, based on their knowledge of procedures adopted nationally and/or in the locality and the staff concerned.

Handling complaints involving more than one special payment team

184. The team that receives the complaint may either:

- take the corporate lead and make the special payment (after consulting with colleagues to establish the effect of the error and a suitable remedy); or
- separate payments may be made by each of the special payments teams involved, to avoid blurring the lines of accountability.

185. In either case, teams must liase with each other so they have a shared understanding of the decisions which have been reached and of any special payments which have been awarded. This should avoid any possible duplication of work and/or payment.

Accounting transfers

186. If business areas are in agreement regarding the source of funding for compensation **and the sum involved justifies the administrative costs involved**, an accounting transfer may be made.

Tax Credits

187. Where maladministration on the part of a DWP business causes a loss of Working Tax Credit or Child Tax Credit, the relevant special payment team may make any resulting special payment. Her Majesty's Revenue and Customs' (HMRC) redress team should use their expertise to assist DWP special payment teams to establish the amount to be paid for loss of statutory entitlement. For more advice see the [Protocol for Cross Department Complaints](#).

Statistical returns

188. Special payments activity should be recorded by the business throughout the year and reported to CReST on a quarterly basis. Reporting requirements are outlined below.

Quarterly returns

189. At the end of each financial quarter (June, September, December and March), details of the special payments considered/authorised/refused by the business special payments teams should be recorded on the spreadsheet CReST issue at the beginning of each financial year. We issue detailed instructions about how to complete the spreadsheet.

190. These returns must be accurate as they are used to collate the annual business special payment figure. Each quarterly return should be signed off by the special payment team manager (or other designated officer) in the relevant business area by completing the blank Certificate of Accuracy (please see annex J) we provide at the beginning of the year. The returns should be emailed to the shared email box: [DWP Complaint Resolution Standards Team](#) using an electronic signature on the Certificate of Accuracy.

Annual statistics

191. At the end of the financial year CReST will collate the quarterly information for each business area to form their annual special payment statistics. This annual information is sent out to the businesses to check and agree. Once they are satisfied it is accurate, the relevant business SCS should sign off the statistics using the Certificate of Accuracy and return the form to us. Once each business area has signed off their statistics, we collate the information to form the annual special payment statistics for DWP. This information is held by CReST and used for informing the Departmental Report, high level briefing, PQ replies and responses to FOIs. (There is separate guidance about the use of special payment statistics in PQs and FOIs which can be found on this link: [PQ and FOI requests about financial redress.](#))

Annex A

SPECIAL PAYMENT DECISION (PAY) – SPEC 1

Section A—Customer details Special Payments Unit:
SP Ref:

Customer's name/ Appointee (if applicable)	Address	NI/Reference number

Type of benefit in payment (if applicable)	
--	--

Section B – Special Payment details

Category of payment	R	Account Code	Gross	Recovery (if applicable)	Net payment
Loss of statutory entitlement (one-off)					
Loss of statutory entitlement (continuing)					
Actual financial loss/costs (one-off)					
Actual financial loss/costs (continuing)					
Consolatory payments					
Extra-statutory (one-off)					
Extra-statutory (continuing)					

R = Award refused under this category

Section C Summary of case

What happened?	
What should have happened?	

Has maladministration been identified? If so, how did this affect the individual concerned?	
What redress is appropriate?	

Section D – SPEC 1 completed by:

Signed		Date	
Name		Grade	
Branch/location		Telephone number	

If the amount of compensation exceeds the DWP business delegated limits:

- £5,000 for a single payment (loss of statutory entitlement/loss of child maintenance)
- £80 for a continuing weekly payment (loss of statutory entitlement or actual financial loss/costs)
- £750 for actual financial loss/costs
- £500 for a consolatory payment

Please refer to DWP Complaints, Redress and Stewardship Team for authorisation at Section E prior to payment.

Section E

AUTHORISATION WHERE SPECIAL PAYMENT IS ABOVE THE DELEGATED DWP BUSINESS OR AGENCY LIMITS

Authorisation is hereby given for the special payment shown at Section A to be made in respect of _____(name).

Signed		Date	
Name		Grade	
Branch/location		Telephone number	

Section F

AUTHORISATION TO PAY

To: **District/Paying Office**

A special payment is authorised in accordance with the category shown in Section B. The reasons for the decision to make this payment are shown at section C. Please make the following payment(s) under:

Benefit Code (if appropriate) _____

Account code _____

Cost centre code _____

Single payment A single payment of £ [enter amount] is authorised

Continuing payment A continuing payment of £ [enter amount] per week/month/quarter is authorised for the period __/__/__ to __/__/__

Signed		Date	
Name		Grade	
Branch/location		Telephone number	

Section G - Payment (to be completed by the paying office)

To: _____ [enter SP Unit]

Single Payment

A single payment of £ _____ as authorised in Section F above was made on __/__/__ .

Cost Centre charged

Continuing Payment

* Arrears paid as above and weekly / monthly / quarterly payments started from __/__/__ .

* The cessation date of __/__/__ has been noted.

* Quarterly returns will be made from __/__/__ .

* Casepaper / GBU /Computer annotations made: Initials:

Date: __/__/__ .

Cost Centre charged

Signed: _____ (On behalf of the District / Paying Office Manager)

Name:
(Block Capitals) _____ Date: __/__/__ .

Office: _____ Phone No:

Voucher number _____

* Delete as necessary

Annex B

Contact details

Independent Case Examiner (ICE)

PO Box 209
Bootle
L20 7WA

Tel: 0345 606 0777

You can use the 0845 code to call any of our 0345 numbers. Check with your phone company which code is cheaper for you.

E-mail: xxx@xxx.xxx.gov.uk

Website: [The Independent Case Examiner Website - Home Page](#)

The Independent Case Examiner's Office provides a free complaint resolution and investigation service for DWP customers who, having exhausted the relevant businesses or providers complaints procedure (in the preceding six months), remain dissatisfied with the response/outcome to their complaint(s).

Full details of the service provided by the ICE Office can be found on their website, or obtained on request.

Parliamentary and Health Service Ombudsman (PHSO)

Millbank Tower
Millbank
London
SW1P 4QP

Tel: 0845 015 4033

E-mail: phso.enquiries@ombudsman.org.uk

Website: [Parliamentary and Health Service Ombudsman / Contact Us](#)

The Parliamentary and Health Service Ombudsman deals with complaints from members of the public, that they have suffered injustice because of maladministration by government departments. A person wishing to have their complaint investigated by PHSO should approach a Member of Parliament (MP), as PHSO can only accept complaints referred by an MP.

Customers may put their complaint to PHSO at any stage, however, in practice there is normally an expectation that the complaint will have been seen by the Department and

pursued through internal complaints procedures and the ICE before being referred to PHSO.

ANNEX C

Delegated limits

Loss of statutory entitlement – one-off payment	£5,000
Loss of child maintenance including advance payment of maintenance and IMA gap payments	£5,000
Loss of statutory entitlement – ongoing weekly amount	£80
Actual financial loss/costs – one-off payment	£750
Actual financial loss/costs – ongoing weekly amount	£80
Consolatory payments	£500

Any cases which exceed these limits should be referred to CReST to authorise.

Annex D

PHSO's Principles for Remedy

Good practice on remedies means:

1. Getting it right

- Quickly acknowledging and putting right cases of maladministration or poor service that have led to injustice or hardship.
- Considering all relevant factors when deciding the appropriate remedy, ensuring fairness for the complainant and, where appropriate, for others who have suffered injustice or hardship as a result of the same maladministration or poor service.

2. Being customer focused

- Apologising for and explaining the maladministration or poor service.
- Understanding and managing people's expectations and needs.
- Dealing with people professionally and sensitively.
- Providing remedies that take account of people's individual circumstances.

3. Being open and accountable

- Being open and clear about how public bodies decide remedies.
- Operating a proper system of accountability and delegation in providing remedies.
- Keeping a clear record of what public bodies have decided on remedies and why.

4. Acting fairly and proportionately

- Offering remedies that are fair and proportionate to the complainant's injustice or hardship.
- Providing remedies to others who have suffered injustice or hardship as a result of the same maladministration or poor service, where appropriate.
- Treating people without bias, unlawful discrimination or prejudice.

5. Putting things right

- If possible, returning the complainant and, where appropriate, others who have suffered similar injustice or hardship to the position they would have been in if the maladministration or poor service had not occurred.
- If that is not possible, compensating the complainant and such others appropriately.
- Considering fully and seriously all forms of remedy (such as an apology, an explanation, remedial action or financial compensation).
- Providing the appropriate remedy in each case.

6. Seeking continuous improvement

- Using the lessons learned from complaints to ensure that maladministration or poor service is not repeated.
- Recording and using information on the outcome of complaints to improve services.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying the Principles to produce reasonable, fair, and proportionate remedies in the circumstances. PHSO will adopt a similar approach in recommending remedies.

Annex E

Helpful paragraphs

General paragraph regarding special payments scheme

The Department has a discretionary special payment scheme, and we can consider financial redress if a customer has suffered an injustice or hardship as a result of our maladministration.

There is no legal requirement for the Department to make special payments. Each case is considered on its own merits, before a discretionary decision is made on whether to make an award. There is no right of appeal against special payment decisions but if you think we have not considered all the relevant facts, or you can provide further information or evidence to support your case, we will look at the decision again.

Request for further information to inform request for a special payment for severe distress

The Department can consider making a special payment in cases where Departmental maladministration has had a significant impact on a person's physical or mental health. Each case is given careful consideration.

In support of your request for a special payment, it would be helpful if you could describe exactly how the Department's actions affected you, including as much objective evidence as possible (for example medical evidence). Such information should include details of:

- your health prior to this period in question
- your health during the period in question
- your state of health since that period/any current prognosis.

Draft paragraph for insertion in award letter

In recognition of ... (briefly describe maladministration which has given rise to the award), a decision has been made to award you a(insert details of the type of special payment) of £ The payment ... (include details of how/when the customer can expect to receive the special payment).

Request for a special payment rejected

Your request for a special payment has been carefully considered but a payment is not considered appropriate, because ... (enter clear, concise and full reasons for the decision).

Response to a review request

We decided on [date] that a special payment could/could not be made to you. You contacted us again on [date] to ask us to re-consider that decision. You said(enter description of alleged maladministration and the effect on the customer).

- We have considered the further (evidence/representations) you have supplied, but have decided not to make a payment because ... (enter reason for rejection); OR
- We have considered the further (evidence/representations) you have supplied, and have decided to make a payment/make an additional payment because ... (enter reason for payment);
OR
- We have considered your request but decided not to review the decision because you have not supplied any new information or evidence for consideration.

Signposting the customer on how they can take matters further

Initial decision letter

If you are dissatisfied with the special payment decision you can ask us to look at it again. If you think we have not considered all the information you provided, please tell us what you think we have missed. If you did not give us all the information/evidence and would like to tell us about some fresh information or send us some new evidence, please do so when you ask us to review the decision. You should send your request to: [add contact details]

Initial review letter [for use where there is more than one review tier]

If you are dissatisfied with the outcome of my review of your special payment decision, you can ask for it to be looked at again. You should send your request, along with any further information/evidence that you wish us to consider to : [add contact details]

Final review letter

We have now completed a full review of your special payment decision and taken account of any new information/evidence you were able to provide. As this is our final response, if you are dissatisfied with the outcome of the review, you can ask the Independent Case Examiner (ICE) to examine your concerns. Details of the service offered by ICE can be obtained by calling ICE on 0345 606 0777 or from the ICE Website www.ind-case-exam.org.uk.

Alternatively, you can ask a Member of Parliament to ask the Parliamentary and Health Service Ombudsman to look at your case, although the Ombudsman will ordinarily expect you to have pursued your complaint through the Department's complaints resolution process (including ICE) before she will intervene.

You can obtain further details about the role of the Parliamentary and Health Service Ombudsman by calling their office on 0845 015 4033 or by visiting their website at www.ombudsman.org.uk

Annex F

Escalation proforma to DWP Complaints, Redress and Stewardship Team

CUSTOMER DETAILS	
Name of customer	
Reference number	
Maladministration Please detail what happened, what should have happened and any service gap.	
Impact Please detail how the customer was financially disadvantaged or otherwise impacted by the maladministration.	
Additional information/evidence/advice Please explain why you are escalating the case and provide any additional details which support your position/argument	

AUTHORITY FOR REFERRAL TO DWP Complaints, Redress and Stewardship Team

I confirm that I have personally reviewed this case and that it is appropriate to send it to:

- 1) the Complaints, Redress and Stewardship Team; or
- 2) the Head of Feedback, Legislation & Decision-Making

for review in line with the escalation procedures at paragraph 60 of the Special Payment Officers Guide.

Name:

Position:

Date sent to the Complaints, Redress and Stewardship Team:

Please attach this form to the file/email.

Annex G

Account codes

Special Payment account codes	Actual Financial Loss	Actual Financial Loss (interest)	Consolatory Payments	Extra Statutory Payments	Loss of Statutory Entitlement
<u>Contributory benefits</u>					
Bereavement benefits	36075	36076	36074	81131	81131
Incapacity benefit	36075	36076	36074	81131	81131
Contributory JSA	36075	36076	36074	81131	81131
Contributory ESA	36075	36076	36074	81131	81131
Maternity allowance	36075	36076	36074	81131	81131
State Pension	36075	36076	36074	81131	81131
Statutory Maternity Pay	36075	36076	36074	81131	81131
Statutory Sick Pay	36075	36076	36074	81131	81131
<u>Non-contributory benefits</u>					
Attendance Allowance	36071	36072	36070	81130	81130
Disability Living Allowance	36071	36072	36070	81130	81130
Carers Allowance	36071	36072	36070	81130	81130
Extended housing / council tax benefits	36071	36072	36070	81130	81130
Industrial death benefit	36071	36072	36070	81130	81130
Industrial injuries benefit	36071	36072	36070	81130	81130
Income Support	36071	36072	36070	81130	81130
Non-contributory JSA	36071	36072	36070	81130	81130
Non-contributory ESA	36071	36072	36070	81130	81130
In work credit	36071	36072	36070	81130	81130
Minimum income guarantee	36071	36072	36070	81130	81130
Pension credit	36071	36072	36070	81130	81130
Reduced earnings allowance	36071	36072	36070	81130	81130
Severe disablement allowance	36071	36072	36070	81130	81130
Social Fund	36071	36072	36070	81130	81130
Winter Fuel Payments	36071	36072	36070	81130	81130
Universal Credit (UC)	36071	36072	36070	81130	81130
Personal Independence Payments (PIP)	36071	36072	36070	81130	81130

Account codes used by CMG

Special payment	Account code
Consolatory	36070
Actual Financial losses/costs	36071
Interest	36072
Advance payments of maintenance	36120
Paternity costs	36110

Account code used for staff consolatory payments

Special payment	Account code
Consolatory payment (staff)	36073

Annex H - Child Maintenance Group Payments

Payments specific to Child Maintenance Group

The following payments are specific to customers of the Child Support Agency (the customer facing business for Child Maintenance Group). The annex covers two of the payment types but there are others which are less frequently used which are not detailed here. For more information please contact [REDACTED] in Child Maintenance Group's Specialist Processing Team.

Advance Payment of Maintenance

An Advanced Payment of Maintenance (APM) is a discretionary lump sum payment made to a parent with care by the Agency. Where the Agency accepts that it has contributed to the accrual of arrears it can consider making an advance payment of any outstanding arrears. There are seven criteria, all of which must be met before an APM can be considered.

The APM is recoverable from the non-resident parent during the course of the arrears repayment process.

Criterion 1

There must be clear evidence that Agency maladministration caused the arrears to accrue.

Criterion 2

Allowance must be made for normal processing times involved in carrying out a new assessment, change of circumstances or securing non-resident parent compliance. Only time elapsed beyond this period will be considered as delay for payment purposes.

Criterion 3

The parent with care must have shown an interest in the progression of their case during the period of the delay, contacting the Agency on at least a quarterly basis.

Criterion 4

The Agency must be satisfied that the non-resident parent would have paid, or that the Agency would have been able to make him pay, had it not been for maladministration.

Criterion 5

A de minimis rule will apply to both the payment of the lump sum and the interest payment. For a lump sum to be considered:

- The arrears owed to the parent with care for the period of maladministration must be over £100, and

- The non-resident parent must be making payments of regular maintenance at the current liable amount, and be paying an arrears agreement but it would take more than 26 weeks to clear these arrears
- An interest payment will be made if the interest totals £10.00 or more

Criterion 6

The non-resident parent is making regular payments at the agreed schedule amounts and dates (either of regular maintenance and agreed arrears payments or, if regular maintenance is not payable agreed arrears payments), and has made payments for the last 26 weeks consecutively.

Where the non-resident has a previous record of non-compliance, and a regular payment pattern was not established in the period *immediately* before the non-resident parent went onto benefit, then an Advance Payment should not be made. An Advance Payment may be considered at a later date if the non-resident parent comes off benefit and establishes a regular payment pattern.

Criterion 7

The parent with care must sign a declaration slip agreeing to the Agency's retention of arrears payments or to refund any relevant direct payments.

Cases that meet all criteria should be referred to the CSA Specialist Processing Team to consider. This should be referred using form CSA351. A chronology explaining the period(s) of delay should be sent along with an account breakdown which includes a split of the non-resident parents' payments into regular maintenance and arrears.

Prior to sending a referral the case should be checked to ensure that there are no outstanding changes or circumstances or appeals, that all maintenance liabilities have been checked for accuracy and any periods of benefit or voluntary/direct payments account for.

Delegated limits

Whilst the special payment scheme allows for discretionary decisions, there are limits to what you can pay. These are set by CReST. The current limit for an advance payment of maintenance is set out in annex C. Any proposals to pay in excess of this amount should be referred to CReST for authorisation. (Please see the section on the Administrative Process for details of how to make the submission.) Care should be taken not to raise the customer's expectations before payment has been approved.

IMA GAP

Imposition of defective or invalid interim maintenance assessment (IMA) (extra-statutory payment)

Since 16 February 1995, there has been provision under Child Support legislation to correct an IMA that is found to be defective. However, where a defective IMA was in place before that date it can only be corrected from 16 February 1995. In such cases the period during which defective IMA has to remain in place is known as an IMA gap. Although the IMA cannot be replaced for that period it cannot be enforced.

The Child Support Agency will consider making an extra-statutory payment in IMA gap cases providing

- the maintenance is due to be paid to the PWC and not the Secretary of State
- the NRP is complying or has complied with the maintenance assessment (either a Full Maintenance Assessment or an IMA) sufficient to have established a payment pattern or there are good reasons to believe he would have done so, if the Child Support Agency on had taken steps to collect maintenance

Any special payment made is equivalent to the amount of child maintenance that would otherwise have been paid, less any payments (e.g. benefits or voluntary payments) received by the client that they would otherwise not have received. This ensures the client is restored to the position they would have been, but for the error.

Note: Financial redress, in the form of interest, is also considered on amounts paid under these circumstances.

Delegated limits

Whilst the special payment scheme allows for discretionary decisions, there are limits to what you can pay. These are set by CReST. The current limit for an IMA gap payment is set out in annex C. Any proposals to pay in excess of this amount should be referred to CReST for authorisation. (Please see the section on the Administrative Process for details of how to make the submission.) Care should be taken not to raise the customer's expectations before payment has been approved.

Annex I

Proforma for referring a case to the DWP Complaints, Redress and Stewardship Team

CUSTOMER DETAILS	
Name of customer	
Reference number	
Reason why case is being referred (eg for advice, for information or for authorisation as the proposed payment exceeds the business' delegated limits).	
Pass to your team leader to authorise before forwarding case to the Complaints, Redress and Stewardship Team.	
AUTHORITY FOR REFERRAL TO DWP Complaints, Redress and Stewardship Team	
<p><i>Please ensure that the referral incorporates the following:</i></p> <ul style="list-style-type: none">• <i>SPEC1 (or summary of the case if a SPEC1 has not been completed)</i>• <i>The action recommended by the Business</i>• <i>Scanned copies of any relevant documents (in date order)</i> <p>I confirm that I have personally reviewed this case, that it is appropriate to forward this case to the Complaints, Redress and Stewardship Team for advice/authorisation in line with guidance, and that I agree with the proposed course of action.</p> <p>Name:</p> <p>Position:</p> <p>Special Payment Team:</p> <p>Date sent to the Complaints, Redress and Stewardship Team:</p>	

Annex J

SPECIAL PAYMENTS: QUARTERLY/ANNUAL STATISTICAL RETURNS
Certificate of accuracy of data

Background

1. Special payments statistics are produced on a quarterly basis using the 'AgencyStats.xls' spreadsheet provided by DWP Complaints, Redress and Stewardship Team (CReST).
 2. The spreadsheet records the number of special payments: considered; rejected; authorised; and the amount paid in each of the following categories:
 - (a) extra-statutory
 - (b) loss of statutory entitlement
 - (c) losses & costs (not including 'interest')
 - (d) losses & costs – 'interest'
 - (e) consolatory payments
-

Certificate

3. I confirm that the data provided in the quarterly return for [Q1, Q2 etc] [year] is an accurate record of the number and amount of special payments authorised by [business area] during that period.

Name of completing officer: _____
[block capitals]

Signature:

Date:

Certificate of countersigning officer

4. I have checked and verified the accuracy of the data provided by [insert name of completing officer] in the return for [Q1, Q2 etc] [year].

Name of countersigning officer: _____
[block capitals]

Signature:

Date:

Exception report

5. If the number of payments and/or the amounts authorised are unusually high or low compared with preceding quarters or with a similar period in preceding years please explain the reasons for that (for example, if a significant

reduction in payments has resulted from a period of high staff absence). If an increase in payments results from a special exercise that has not previously been reported to CReST, please provide full details (see the Administrative Process of the *Financial Redress for Maladministration: A Guide for Special Payment Officers*). If any non-benefit special payments have been made, please explain what they were for.

Action after completion

6. This form should be returned to the shared in-box '[DWP Complaint Resolution Standards Team](#)' accompanied by an electronic copy of 'AgencyStats.xls' for the quarter.
7. CReST recommends that each business unit retains a hard copy of both this form and 'AgencyStats.xls' for reference in the event of any queries.
8. The quarterly stats returns are used by CReST for preparing the annual statistics, monitoring expenditure and trend analysis. The quarterly stats returns should be signed by a designated officer or the special payment team manager. The annual stats are used to inform the Departmental Report and form the basis of any briefing or PQ/FOI replies. **Annual stats must be signed off by a Senior Civil Servant.**