

Financial Redress for Maladministration

A GUIDE FOR SPECIAL PAYMENT OFFICERS

Complaints, Redress and Stewardship Team

This guide replaces any previous guidance and will apply to all special payment considerations being made on or after 18 December 2017.



**Department
for Work &
Pensions**

Glossary of terms

Deciding on the balance of probabilities	Determining whether it is more likely than not that an alleged event or incident occurred, where there is little or no evidence to support the customer's view
Ex gratia payments	Sum of money paid voluntarily, without any legal requirement to do so
Extra-statutory payments	Sum of money paid over and above that covered by statute (but within the scope of the legislation's broad intent)
Financial Redress	Money paid as part of redress. This may include sums to recompense for extra costs incurred and/or sums to recognise the impact of poor service on the customer.
Maladministration	The term used to describe when government actions or inactions result in a customer experiencing a service which does not match our aims or commitments.
Redress	Remedy for a wrong or a grievance, which can include any combination of an apology, an explanation, putting things right and a financial payment.
Third Party	For the purpose of this guidance, a third party is an individual (usually a close friend or family member) who personally incurs an injustice or hardship due to DWP maladministration when dealing with us on a customer's behalf.

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 the Finance overview of special payments.

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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 47) 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.

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 18).

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.

16. 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

17. 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

18. 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.

19. 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).

20. 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.

21. 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 they 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 (which will allow the complainant the opportunity to escalate to ICE).

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

22. 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 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.

23. 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 it has been 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.

24. 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

25. 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

26. 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 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.

27. 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.

28. 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

29. 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.

30. 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

31. 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.

32. 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

33. 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.

34. 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 vested in them, to make a different decision.

35. 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 36 to 38 applies.

36. 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

37. 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

38. 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.

39. 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

40. 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.

41. 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

42. In determining the extent to which Departmental maladministration has resulted in a customer (or, exceptionally, a third party²) experiencing an injustice or hardship, it may be necessary to consider whether a customer acted reasonably in relation to their dealings with the Department.

43. 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;

² We can consider a special payment for an individual (usually a close friend or family member) who personally incurs an injustice or hardship due to DWP maladministration when dealing with us on a customer's behalf.

- 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

44. 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.

45. 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

46. 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 62 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.

47. 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

48. 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.

Handling special payments in cases which have been accepted by the Independent Case Examiner (ICE)

Resolution

49. As part of the ICE process, an Investigation Case Manager may attempt to resolve³ the case. If an opportunity is identified by ICE, the Focal Point or the business, ICE will attempt to broker an agreement which satisfies all parties. If maladministration is accepted, any proposed special payment should be considered, business as usual, by the appropriate part of the business, within their delegated limit⁴ and in accordance with special payment policy intent. If any of the following apply, the case should be referred to CReST to consider:

- the limit exceeds the business delegated limit; or
- the case is one which CReST needs to see (see paragraph 186) irrespective of the proposed amounts; or
- there are policy concerns about the proposed payment.

³ Resolution is where ICE will attempt to broker an agreement between the complainant and the business without examining the evidence.

⁴ See paragraph 197 for details of cases that DWP cannot agree without Treasury approval

50. There are two reasons the proposed payment could be refused: the first is that the case for payment has not been made; the second, that the proposed payment is not in line with policy intent. If payment can be agreed, the Focal Point should notify ICE that resolution is feasible. If the business (including the special payment team and CReST) or the complainant does not agree the resolution, the case proceeds to ICE investigation.

ICE Settlement / Investigation cases

51. On receipt of the evidence, an Investigation Case Manager will complete a case history outlining the facts of the case. It is the role of the Focal Point (with input from the business, including special payment officers and CReST if they have had prior involvement in the case) to check the accuracy of the facts which will be used by the ICE to inform their findings about maladministration. If there are any gaps or errors with the facts, these should be rectified at the case history stage so that the ICE has the full picture.

52. If the Investigation Case Manager, the Focal Point or the business identifies a settlement⁵ opportunity, this should be explored using the process outlined above for resolutions.

If payment can be agreed, the Focal Point should notify ICE that settlement is feasible. If the business (including the special payment team and CReST) or the complainant does not agree the settlement, the case proceeds to ICE investigation.

53. ICE investigations involve a full review of the case evidence and the ICE will reach their own conclusions about maladministration and the impact on the customer in line with their findings. The ICE's provisional findings are shared at draft report stage with the relevant Focal Point. It is the role of the Focal Point (with input from the business, including special payment officers and CReST as appropriate) to check that the facts have been interpreted correctly and that the findings and recommendations can be agreed. If a special payment is being proposed, the Focal Point should check first if the business accepts the maladministration. If they do, the special payment should be considered by the appropriate part of the business, within their delegated limit and in accordance with special payment policy intent. This is to confirm whether the payment can be 'agreed in principle'. Consolatory payments are a judgement call for the ICE and the expectation is that the specified amount should be accepted without challenge if the maladministration has been articulated and accepted, having regard to the necessary delegations / authorisation route.

54. If any of the following apply, the case should be referred to CReST to consider:

- the limit exceeds the business delegated limit; or
- the case is one which CReST needs to see (see paragraph 187) irrespective of the proposed amounts; or
- there are policy concerns about the proposed payment.

⁵ Settlement is where, after examining the evidence, ICE will attempt to broker an agreement between the complainant and the business.

55. The ICE draft report should provide sufficient details about the maladministration and the impact on the customer to justify the payment they want DWP to make. If a loss/costs or loss of statutory entitlement (LOSE) payment is being recommended, the report should detail the evidence used to determine the amount. This is because, in ICE investigation cases, special payment officers will use the ICE report rather than make their own determination of the amount due. In effect, the report is the audit trail for the payment. Open-ended recommendations, where the ICE has not determined the amount due, but left that to the business to calculate, will be rare but in the event they occur, the special payment officer should determine the amount in accordance with the policy and guidance (and advice from CReST where appropriate). As it won't be clear at draft stage if an open-ended recommendation will need CReST approval, the draft report should be referred to CReST to confirm there are no policy issues with the proposed payment. This will ensure that the payment can be authorised should it ultimately exceed the business' limit.

56. If payment can be agreed, the Focal Point should notify ICE that the recommendation is accepted in principle. If the business (including the special payment team and CReST) does not agree, the Focal Point should explain the rationale to ICE. Any special payment dispute at this stage will be policy related. Disputes are dealt with by the relevant ICE Focal Point in accordance with agreed escalation routes. However, if the dispute is solely from CReST, ICE and CReST can escalate any concerns through the CReST escalation route. If DWP does not have the authority to agree the payment (for example, a consolatory payment which requires Treasury approval) the Focal Point should notify ICE that the special payment requires external approval before DWP can agree it.

57. Once the final report is issued, the Focal Point will be responsible for ensuring that the payment is made by the appropriate team in line with the delegated limits. Any payments which exceed the businesses' delegated limits should be referred to CReST for authorisation.

Handling special payments in cases which have been accepted by the Parliamentary Health Service Ombudsman (PHSO)

Resolution cases

58. Whilst PHSO can resolve cases without completing an investigation, they are rare in DWP cases because of ICE's role. However, when they identify a resolution opportunity, PHSO will approach the relevant Focal Point with their proposals. It is then for the Focal Point to liaise with the business and the Corporate Parliamentary Ombudsman Liaison Team (CPOLT) to check if the proposals can be agreed. Special Payments should be considered in line with the business' delegated limits and in accordance with special payment policy intent. If any of the following apply, the case should be referred to CReST to consider:

- the limit exceeds the business delegated limit; or

- the case is one which CReST needs to see (see paragraph 187) irrespective of the proposed amounts; or
- there are policy concerns about the proposed payment.

The Focal Point are responsible for informing PHSO of the outcome.

PHSO investigation cases

59. When PHSO complete their investigation, they will share their draft report with the CPOLT, the Focal Point and the customer. The draft report will outline their provisional findings and recommendations. CPOLT, in liaison with the Focal Point, who will arrange for a factual accuracy check and confirm whether the business agree the draft outcome and recommendations. This includes checking whether any special payments are in line with policy intent and seeking agreement in principle for the payment to be made once the final report is issued. The process is similar to that described for ICE investigations. CPOLT prepare the response to PHSO. This will cover any factual inaccuracies and will either accept or challenge the findings/outcome and/or any proposed redress as appropriate.

60. Once the final report is issued, the Focal Point will be responsible for ensuring that the payment is made by the appropriate team in line with the delegated limits. Any payments which exceed the businesses' delegated limits should be referred to CReST for authorisation.

Recording the special payment decision

61. 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. In ICE and PHSO cases, you should populate the SPEC1 with the information provided in the report (or, in ICE investigation cases, the ICE SPEC1). The SPEC1 should clearly document:

- *What happened:* this section should record the facts of the case (in chronological order), making it clear which are actual facts (i.e. 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 (i.e. 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. If you are not sure what should have happened, 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.

62. 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

63. 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.

64. There are further details about making a referral in paragraph 186 and onwards. This also explains which cases must be referred to CReST for checking/authorisation.

Notification of a special payment decision

65. 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. The notification may be in writing, or explained by telephone (for example, a straightforward decision by a complaint resolution manager).

66. 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 they want to supply further information;
- provide details of how the customer can take matters further if dissatisfied with the special payment decision. The escalation route is determined by the business but we would advise including a review stage, where the decision can be considered afresh before signposting to ICE.

Disputes about special payment decisions

67. 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

68. 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. You should 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 CReST's manager.

CReST Step 2:

If you remain dissatisfied with the final response from CReST you can ask your Senior manager to approach CReST's G6. In response, CReST's G6 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 signpost the complainant to ICE (business dispute) or PHSO (ICE dispute).

Disputes/escalation by the customer

69. 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.

70. 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.

71. 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 212) 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

72. 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.

73. 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.

What to pay - special payment categories

74. There are three main special payment categories:

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

75. 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 167 refers) as extra statutory payments which are recorded by benefit type.

76. 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

77. 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

78. 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 on-going award for LOSE; however, a top-up payment might be a suitable remedy.

79. If the customer has no statutory entitlement to a benefit, but would have done but for the maladministration, you can consider an on-going payment for the loss. However, if they have lost entitlement because the rules have changed, then awarding them on-going 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 point⁶: 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 on-going 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.

⁶ 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.'

Establishing the loss

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

Determining the period of loss

81. 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.

PIP LOSE cases

82. You may be asked to consider LOSE for the difference between DLA and PIP when the new benefit is higher, and the claimant either believes that PIP should be backdated, or that we took too long to process the change. However, it is only possible to backdate PIP if it is a new claim. Cases transitioning from DLA to PIP always have a future effective date (28 days after the PIP decision) and this requirement is set in legislation. It is also worth noting that: DLA remains in payment until PIP begins, so there is no gap in payment; there will be winners and losers in

cases migrating to PIP (i.e. in some cases PIP will be less than DLA, in others it will be more); and there is no set timeframe for the transition.

83. Given this, you need to give very careful consideration to making a LOSE payment for PIP as the special payment will effectively backdate PIP which goes against PIP policy intent. As such, LOSE will not be appropriate for cases which incurred general delays when transitioning from DLA to PIP. However, there are some exceptions to this general rule. The first concerns special rules cases. In these cases there is a timeframe (10 working days) for us to complete the transition. In cases which took longer, and the delay was our fault, rather than the customer's, we can consider a payment for the period of delay, which tops up the DLA to the level of the PIP payment (provided it is higher).

84. The second exception concerns cases where the delays have been general, but the period of time is deemed excessive and therefore maladministrative. In these cases the end to end delay must exceed 12 months.

85. The third exception concerns cases of DWP delay, where although the delay is not deemed excessive (i.e. over 12 months) the customer has faced an additional and significant delay, which goes beyond the general delays PIP customers encountered. This has significantly delayed the start date for PIP and the PIP payment exceeds the DLA. For example:

- Cases where a DWP error has significantly delayed a customer from entering the migration process and therefore delayed the PIP start date;
- Cases where a DWP delay part way through the migration process has significantly delayed the PIP start date;
- Cases where an error at the end of the process has significantly delayed the PIP start date.

86. However, if you have a case where you think LOSE may be appropriate, despite not fitting one of the scenarios above, please refer it to CReST for consideration.

Calculating the Period of LOSE in PIP cases

87. There are various ways you can determine the period of loss:

1. use the Average Actual Clearance Times (AACT) migration figures published on Gov.UK to determine the average processing time, and consider paying the difference between the DLA and PIP for delays beyond this period; or
2. use the actual end to end processing time once the customer entered the system and consider paying the difference between the DLA and PIP for delays beyond this period; or
3. consider compensation purely for the identified period of maladministration.

88. We would suggest using option 1 for cases which are rushed through as priority cases once the maladministration is uncovered or cases where the delay took place during the migration process.

89. We would suggest using option 2 for cases which were delayed from entering the process. This will ensure that a factual figure is used as opposed to an approximation based on national averages which could vary throughout the country.

90. We would suggest option 3 for cases where the maladministration occurred at the very end of the process.

91. Please note that the scenarios and suggested means of redress are not prescriptive and the Special Payment Decision Maker can use their discretion whilst making an award.

Example 1:

Mr F had entitlement to DLA and in January, he reported a change in his condition. As he was living in a PIP postcode, he completed the PIP2 and attended the assessment. The assessment report was returned to DWP in July, and it was incorrectly noted as a new PIP claim. This resulted in the claim being sent to an incorrect Disability Benefit Centre. Three months later, it was noted that there was an existing DLA claim, and the case was reallocated to the centre responsible for transitional cases. The PIP decision was made in December.

In this scenario you could consider paying LOSE, despite the end to end process being completed within 52 weeks, because DWP maladministration caused additional delays which directly impacted the date on which the customer became entitled to PIP. When considering the period of loss, you may wish to apply the AACT to determine whether Mr F suffered undue delay. Remember to take account of the DLA that has already been paid, and the four week run-on period, when considering a payment for LOSE.

Example 2:

Mr A lives in a PIP postcode and receives an invitation to claim PIP when his DLA award approaches renewal. He calls the PIP enquiry line and follows the process of making a new claim. When the claim is referred to an Assessment Provider (AP), it encounters general delays. Once the case is referred back to DWP, a decision is made promptly and Mr A is awarded PIP at a higher rate than his DLA award. The end to end process took 48 weeks and he subsequently requests a Special Payment for the difference between his DLA and PIP awards.

In this scenario, the period is not in excess of 52 weeks, and the delays were general in nature.

Example 3:

Mr B calls DLA to report a change of circumstances in January and despite living in a PIP postcode, the agent fails to identify this and issues a DLA change of circumstance form. Some time after the form is returned, we recognise the error and invite the customer to claim PIP in June. He does this and the end to process takes 16 weeks.

In this case the delay occurred at the outset and you can consider using the actual time taken to complete the migration (16 weeks) to determine when PIP might have been awarded had we taken correct action in January. Remember to take account of the DLA that has already been paid, and the four week run-on period, when considering a payment for LOSE.

Example 4:

Mrs P had entitlement to DLA and made a claim to PIP. Having completed the PIP2 and attended the assessment, a case manager made the decision to award PIP but did not submit the decision for approval, which is the final stage of the decision. The decision was not submitted until three months later, despite the customer calling to chase up the progress of her application. The decision was subsequently submitted and the end to end process was completed within 52 weeks.

In this scenario you can consider paying LOSE despite the end to end process being completed within 52 weeks because DWP maladministration has caused additional delay which directly impacted the date on which the customer became entitled to PIP. When considering the period of loss, it is clear that benefit could and should have been paid from an earlier date. You should consider redress for the actual period of delay (i.e. the point it should have been submitted up to the point it was). Remember to take account of the DLA that has already been paid, and the four week run-on period, when considering a payment for LOSE.

Example 5:

A DS1500 (form submitted when customer is terminally ill) was received in respect of Mr M and the details were input on the Personal Independence Payment Computer System (PIPSCS). A task was generated the following day, however, this was closed with no further action being taken. A number of internal tasks were subsequently created and sent between work queues without any action being taken. When the task was actioned, three weeks after the DS1500 was received, the Case Manager registered the claim but failed to refer the case to the Assessment Provider for them to consider if the customer met provisions under Special Rules Terminally Ill (SRTI) rules. This action was completed two weeks later. Once the case was returned from the Assessment Provider, a decision was made to award PIP with effect from the next payment day.

In this case, you can consider paying LOSE as the 10 working day target for processing SRTI cases has been missed. The period of loss should take into account the 10 day processing target and when the award may have been effective from but for the maladministration.

Alternatives to LOSE

92. If the end to end process took less than 12 months and the case does not fit the scenarios for significant additional delay, but there has been DWP maladministration, you may wish to consider a consolatory payment.

93. In responding to customers who state they have incurred a LOSE because they expected any increase in benefit to be backdated, Special Payment Decision Makers should explain that: there are no statutory processing times for PIP assessments; PIP is a new benefit to which entitlement needs to be assessed on an individual basis; DLA is payable until such time as PIP entitlement commences and provision for a future effective date is set by legislation.

On-going payments for loss

94. If the loss relates to a future period, and you plan to make on-going 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 on-going awards you implement. (In practice, the special payment is paid clerically but the

case is set up as a credits 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

95. 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

96. There are limits to what you can pay without seeking authorisation/ approval. The special payment delegations are set by CReST and are separate to the financial delegations about payment limits determined by staff grade. 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.

On-going payments

97. All 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

98. 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

99. Actual financial loss/costs can be considered where maladministration has resulted in a customer or exceptionally a 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

100. It is important to distinguish between financial loss and financial disappointment. Some customers may be disappointed not to receive something they believed, 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.

101. 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.

102. 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 132 for more details).

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

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

Additional costs

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

104. If a customer incurs reasonable additional expenses as a result of DWP maladministration, a special payment may be made to reimburse those additional costs. (See paragraph 130 for the evidence needed to support a claim for additional expenses.)

105. In deciding whether costs are reasonable, regard should also be 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. It is not necessary for costs to have been incurred through dealing directly with the Department. 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

106. 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. 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

107. 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 incurred charges because of the benefit delay. You would need to see copies of the credit card statements 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

108. 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. DWP operations 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. 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, e.g. existing mortgage arrears.

Loss

Loss of earnings

109. Any cases in which a complaint of loss of earnings is judged to be justified should be referred to CReST to consider. 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

Parent with care loss

110. There are several ways in which a delay by the Child Maintenance Group (CMG) might cause a parent with care (PWC) to incur a loss of child maintenance. If the CMG delayed in setting the initial effective date of a case following a maintenance application, or caused delay in the making of a maintenance application, this can delay the start date of the non-resident parent (NRP's) liability to pay. The gap between when liability might have started and when it did due to CMG delays, is the period of potential loss.

Establishing if a loss was actually incurred (payment pattern)

111. To establish if a loss was actually incurred, the CMG must be satisfied that the non-resident parent (NRP) would have paid their maintenance liability. In making this decision you should consider the compliance behaviours of the NRP, such as any refusal to pay or non-compliance in the information gathering process. You can use these behaviours to determine whether you require a 6 month payment pattern, or whether something shorter would suffice. For example the decision maker may be satisfied that a NRP has proved full compliance after they have made 3 monthly payments because they provided their details on time and made voluntary payments of maintenance. Whereas, with a NRP who was uncooperative throughout the process, you may require a longer payment pattern, such as 6 months. If the NRP has never co-operated with CMG, this calls into question whether the PWC has incurred an actual loss. Decisions should be made based on the circumstances of that case. Payments can be made under any service type; if they are made under 'direct pay', evidence will be required to show that payments have been made.

2012 Scheme Examples:

112. Where an applicant has provided all required information in their application, the effective date should be set within one month. The following examples explain more:

Example 1: Receiving Parent (RP) application

Mrs C makes an application as a RP on 12 January 2016 providing all required information to progress the application. The effective date should be set within one month, by 11 February 2016. The provisional calculation notification is not issued to the paying parent until 29 March 2016; this sets the effective date as 4 April 2016. The period of loss has occurred from 12 February 2016 to 3 April 2016 (day before the effective date). The daily liability is calculated at £7 a day from 4 April 2016. The amount of loss is 52 days x £7 = £364.00. This amount would reduce to take account of any voluntary payments of child maintenance received by the RP during this period.

Example 2: Paying Parent (PP) application

Mrs E makes an application as a PP on 17 May 2016, providing all required information to progress the application. The effective date should be set within one month, by 16 June 2016. The required information is gathered and the initial maintenance calculation is completed and initial notification letter issued on 28 June 2016. This letter sets the initial effective date as 4 July 2016. The period of loss has occurred from 17 June 2016 to 3 July 2016. The daily liability is calculated at £7 a day from 4 July 2016. The amount of loss is 17 days x £7 = £119.00. This amount would reduce to take account of any voluntary payments of child maintenance received by the RP during this period.

113. Where there is clear evidence that an effective date 'would' have been set sooner than one month then the start date for the period of loss can be set from that date.

Example 3: Notification error causes delay

Mrs R makes an application as a RP on 4 February 2016; the 'effective date' should be set by 3 March 2016. On 15 February a provisional letter is generated with the effective date of 21 February 2016, however, it is issued to an incorrect address or is not issued at all. This means that an effective date has not been set. The letter is finally generated to the correct address on 25 April 2016 setting the effective date as 1 May 2016. As CMG has clear evidence that an effective date would have been set sooner had the notification been correctly issued the period of delay is 21 February 2016 to 30 April 2016.

Example 4: Unreasonable delay in allowing an applicant to make an application

Mr P calls the CMG to make an application as a RP on 5 January 2016 as he now has primary care of the qualifying child. He has not yet claimed Child Benefit. He is incorrectly advised that he cannot make an application until he is awarded Child Benefit. Mr P contacts the CMG on 21 March 2016 to advise he has received notification that day that Child Benefit has been awarded to him from 4 January 2016 and makes an application for Child Maintenance. On 29 March 2016 the provisional calculation notification is issued to the PP setting the effective date as 4 April 2016. It took 8 days from the date of application to issue the notification that set the effective date. Mr P contacted the CMG immediately upon being notified that Child Benefit was awarded. Had the correct advice been provided on 5 January 2016, the earliest date that the provisional calculation notification could have been issued is 13 January 2016 (8 days later), which would have set the

effective date as 19 January 2016. The period of potential loss is therefore 19 January 2016 to 3 April 2016.

1993 & 2003 Scheme Examples:

Example 1: *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 2: *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.

Refunds/Reimbursement of maintenance

Non-resident parent loss

114. Overpaid maintenance can be refunded to the NRP if CMG still have the funds. If the money has been paid to the PWC, a reimbursement can be considered for the NRP. Neither payment is made via a special payment; instead a finance transaction or adjustment can be made. Refunds can be made from a central pot. In a reimbursement case, CMG should consider whether the money can be recovered by reducing future maintenance payments. Further information regarding reimbursements can be found [here](#).

CMG provides incorrect bank account details to the paying parent

115. If CMG have given the paying parent incorrect bank account details for the receiving parent and caused them a loss of maintenance, they can reimburse the receiving parent via a finance transaction, rather than a special payment. In the first instance CMG will pay the receiving parent the money they lost due to Departmental error and then seek to recover the payment from the incorrect recipient using their Payment Error Recovery Process. CMG's replacement payment to the receiving parent will not be a Special Payment under this scheme; instead it will be a financial transaction using CMG's 'non standard payment process' and registered under CMG's main account code as 'financial redress' for accounting purposes.

Interest losses

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

116. 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 Customs'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'.

117. 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 25 - 39 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.

118. If you identify a case which does not meet the criteria specified in paragraph 111, 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 interest losses 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

119. If a customer can demonstrate that they have lost interest due to a delay in paying benefit / child maintenance, you can consider a special payment to reimburse the loss. You will need to consider if the payment 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

120. If a customer has withdrawn funds from an interest-bearing account to meet living expenses because of a delay in paying benefit (or more rarely, child maintenance), 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 117 for an example.

Other losses / costs

Savings policies – early surrender

121. A customer suffering financial hardship as a result of Departmental maladministration may find it necessary to surrender a savings policy (e.g. 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.

122. 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.

123. 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

124. 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.

125. 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.

126. 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

127. 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 DWP. Each application for reimbursement of professional fees should be judged on its own merits, in the light of the circumstances of the case.

128. 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 request from the next of kin to reimburse the additional fees caused by our maladministration.

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.

129. 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, with input from Legal Group if necessary. If you have a case which you think should be paid, please refer it to CReST 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

130. 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 and do not seem unreasonable, then it might be appropriate to accept the customer's account without supporting evidence. However, larger sums should be supported by evidence and bank or credit card statements should be checked before making any payment in respect of these fees / charges. Where the customer has no evidence of the loss or cost, you will need to consider whether it is reasonable to expect them to acquire it, or whether other forms of supporting evidence / information might suffice.

What to pay

131. 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

132. If a customer alters his or her circumstances to their detriment as a direct result of incorrect Departmental advice, a special payment can 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

133. 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

134. 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

135. 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 paragraph 132.

Customer stops work following receipt of an erroneous forecast

136. 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. You will need to consider an appropriate end point if the customer chose not to return to work, despite being aware of the impact on their pension.

Deciding individual cases

137. 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 132 (*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

138. 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

139. 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

140. There are limits to what you can pay without seeking authorisation/ approval. The special payment delegations are set by CReST and are separate to the financial delegations about payment limits determined by staff grade. 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.

On-going payments

141. All 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

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

Consolatory payments

Overview

143. 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.

144. Consolatory payments are made for non-financial impacts, which affect a customer's well-being. As this type of impact cannot always be proved with evidence, they can be more difficult to determine. A consolatory payment can be considered regardless of whether or not any other form of redress payment has been made.

145. To decide whether a consolatory payment is merited, it is important to consider how our maladministration affected the life of the customer. 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 impact may fall under more than one heading but you should not pay 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 146);
- *gross embarrassment, humiliation or unnecessary personal intrusion* (see paragraph 147); and/or
- a significant impact on a customer's physical or mental health - referred to as *severe distress* (see paragraph 148).

What constitutes gross inconvenience?

146. 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?

147. 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;
- unnecessary gathering of personal information;
- insensitive information gathering.

This list is not exhaustive.

Example:

On 13 February 2009, the Child Maintenance Group (CMG) received a maintenance application form from parent with care Mrs J. Mrs J provided personal details of the non-resident parent. The CMG 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 CMG contacted Mrs J to obtain further details leading to the CMG 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?

148. 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.

149. 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?

150. 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

151. 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:

DWP incorrectly informed a customer's wife that he had died. The customer was away from home at the time, and his wife believed the official.

152. 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?

153. 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?

154. 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?

155. In many cases the customer will have a pre-existing health condition. This does not preclude consideration of payment as the condition may have been made worse by Departmental maladministration or the maladministration may have caused

a delay in recovering from the illness. 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?

156. 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 person 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 person who is known to the individual, may have an impact of far greater duration.

Delay in considering a special payment

157. Redress should be considered at the earliest opportunity. As such, if we failed to consider redress when things first went wrong, we should take account of our delay when we do consider making an award.

Delegated limit

158. Consolatory payments will usually range from £25 to £500, but bigger payments may be made in appropriate circumstances. There are limits to what you can pay without seeking authorisation/ approval. The special payment delegations are set by CReST and are separate to the financial delegations about payment limits determined by staff grade. 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.)

159. HM Treasury deem consolatory payments over £500 (or £1,000 in an ICE case) – including aggregated payments for the same maladministration which total over £500 (or £1,000 in an ICE case) - to be novel and contentious. Novel and contentious payments require Treasury approval. See the Administrative Process for more information about how to seek HMT approval. Care should be taken not to raise the customer's expectations before payment has been approved.

Tax and consolatory payments

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

Child Maintenance Group Payments

161. In addition to losses / costs and consolatory payments, there are further categories of special payment which are specific to the Child Maintenance Group.

Unusual Cases

Novel and contentious cases: alerting Ministers

162. 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.

Threat of legal action

163. There is bespoke guidance on how to deal with complaints or correspondence which refer to legal issues or which threaten legal action can be found here.

Legal settlements

164. If a customer takes the Department to Court, lawyers in Government Legal Division (GLD), who deal with litigation cases, may seek to settle the case. Settlement is considered if lawyers confirm that DWP has maladministered and they think the case will not go in DWP's favour. When a legal settlement is proposed by GLD, this should be agreed by the Manager instructing lawyers and their Finance Business Partner. HM Treasury require that the payment represents a robust 'value for money' case. This is usually achieved by comparing the proposed settlement figure with the amount the case might cost DWP (in terms of damages and legal costs) should it go to Court. GLD will be asked for their opinion regarding the likelihood of DWP's success in winning the case, as part of the value for money consideration. Cases of this nature are not determined using the customer special payment scheme, but are processed by the National Special Payment Team. As such, cases will still be referred to CReST to consider. Part of CReST's consideration will be whether there has been maladministration, whether the case is novel and contentious, and whether the settlement represents value for money. HM Treasury has advised DWP not to settle cases where there is no evidence of maladministration (even though it might be possible to settle for less) as a matter of principle.

Special exercises

165. 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 i.e. legislation which does not reflect the intentions of Ministers and this adversely affects customers.

166. The decision to set up a special exercise will fall to the Strategy / 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 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

167. 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 until corrective legislation can be put in place and they 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, CReST will need to know the total payments made and the total amount paid each year. (See the section on The Administrative Process for details.)

168. 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 Strategy Team 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.

Taking account of overpayments or overprovision of benefit when making special payment decisions

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

169. In cases where there is a non-recoverable overprovision of benefit, you can decide not to make a special payment (known as considering a case ‘in the round’). In cases where there is a recoverable overpayment (or, more rarely, a recoverable overprovision) of benefit, you can decide to offset the proposed special payment against money the customer owes to the Department..

170. Whilst the decision whether financial redress is appropriate should not be influenced by the existence of an overpayment or overprovision of benefit *per se*, if you are considering a special payment for maladministration in a case where the customer has been paid more benefit than they were due, you can take account of that in your decision. You would first decide if a special payment is merited for the maladministration identified. Where a special payment is warranted, you can decide not to make a special payment (by considering the circumstances ‘in the round’ in a non-recoverable debt case) or you can offset the special payment against the overpayment if the debt is recoverable.

Example: Considering ‘in the round’

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

171. There are two basic guidelines that should be followed when considering offsetting a special payment against a recoverable debt::

- any small recoverable overpayment or overprovision of benefit (currently set by Debt Management at £65 or less) should be ignored;
- only recoverable overpayments or overprovisions that have been notified to the customer⁷ should be deducted from the special payment.

Taking account of overpayments of child maintenance, or arrears of child maintenance when making special payment decisions

172. If maladministration is identified in a child maintenance case, and a special payment is merited, you can consider the case 'in the round' (see paragraph 170). If the individual has benefited financially from the maladministration, you may decide not to make a special payment on that basis. Alternatively, where arrears are owed by the non-resident parent, you can decide to offset the special payment against those arrears provided:

- those arrears do not amount to less than £65; and
- the non-resident parent had previously been notified that arrears are owed.

You can also offset the Special Payment against an overpayment of child maintenance to the parent with care provided:

- the overpayment cannot be recovered by other means;
- the overpayment balance is not less than £65, and
- the parent with care has been notified of the overpayment.

When a deduction should not be made

173. An overpayment or overprovision of benefit/child maintenance 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 132) 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.

⁷ Customers are notified of the overpayment/overprovision irrespective of the decision on recoverability.

Recovering an overpaid special payment

174. 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

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

175. 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
- the maladministration was such that a special payment was merited; and
- we had started the special payment process prior to the customer's death, *we will complete that process.*

176. If the circumstances in paragraph 175 apply, the special payment should be processed in respect of the customer, then issued to the person dealing with the deceased person's affairs. The payment will reflect the impact of the maladministration on the customer and can be made in respect of any of the special payment categories.

Maladministration and need for financial redress identified after the customer's death

177. 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.

Special payments to next of kin and third parties

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

178. If the next of kin or a third party (for example a friend of the deceased person) submits a request for losses/costs in respect of the deceased customer's

case and the criteria in paragraph 175 do not apply, a special payment should be refused. This is for the same reason outlined in paragraph 177 above.

179. 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.

180. If you decide to make an award for loss in accordance with the circumstances in paragraph 179 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. 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 Administrative Process.

181. If the next of kin submits a request for losses/costs *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

182. 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 Administrative Process.

Universal Credit Landlords

183. Universal Credit (UC) seeks to make the transition into work smoother for claimants by paying them monthly and awarding them (and not their landlord) the housing element so that they can pay their own rent. Where claimants fail to pay their rent and fall into arrears, landlords can seek an Alternative Payment Arrangement (APA). Under these circumstances, when an individual landlord is requesting/receiving a service from us, they can be considered a customer for special payment purposes.

184. We have seen a number of requests for compensation for rent losses where the landlord considers we have caused them a loss by not acting quickly enough regarding the APA. In considering whether DWP is solely responsible for the rent arrears, it is important to remember that we will have paid the UC housing element to the claimant and it is for them and not DWP to pay the landlord. Similarly, it is for the landlord to pursue any overdue rent in the normal way. Compensating the landlord

would absolve them and the claimant of their responsibilities and drive the wrong behaviours. As such, if you are considering paying a landlord loss in these circumstances, please check with CReST that you are following policy intent. Remember too that it might be feasible to help the landlord recover the arrears via benefit deductions.

185. If the landlord seeks recovery of the rent arrears via court action, and the arrears are solely DWP's fault, we can consider reimbursement of the court costs. It is unlikely that DWP will have caused all the arrears (given an APA is generally only appropriate if the claimant was already in arrears) but in the event that you decide that our actions (or inactions) have caused the individual to incur costs that would otherwise have been avoidable, you can consider reimbursing all or part of any reasonable recovery costs. We would require evidence of the costs and confirmation that they have been paid.

Administrative Process

Overview

186. 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.

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

Advice cases

187. 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 (e.g. 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;
- Any payment over the business delegated limit.

Copy to CReST for information:

- Cases requiring legal action/advice.

Presentation of the case

188. 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 Finance or Treasury.

Cover document

189. All requests for advice/authorisation should be covered by a referral proforma. Each referral requires authorisation by the Team Leader.

The submission

190. 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

191. 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

192. 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

193. 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 68.

Special payment authorisations

194. The authority to make special payments has been delegated to the Department by the Treasury. CReST has delegated authority to the business to make special payments subject to the delegated limits. If you want to make a payment which will exceed the delegated limits, you must submit the case to us for authorisation. CReST will consider whether the payment accords with policy intent, and whether the information in the SPEC1 provides a robust case for payment. If there are any issues, CReST will return the SPEC1 for further action by the business. If payment is agreed, CReST will provide the necessary authorisation (unless the case requires Finance/HMT approval – see paragraph 197 for details). Staff cases where a consolatory payment is proposed must also be referred to CReST for authorisation. CReST do not own the guidance for special payments to staff (which is covered in the guidance provided by Finance) but the team has greater experience of consolatory payments and for that reason has agreed to check these cases. CReST will consider whether the information in the SPEC1 provides a robust case for payment. If there are any issues, CReST will return the SPEC1 for further action by the business. If payment is agreed, CReST will provide the necessary approval.

Test checks

195. 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.

Finance controls

196. CReST will notify Finance on a quarterly basis regarding any payments which exceed £5,000. This is for Finance's overview. Any special payment which requires Treasury approval must be referred to Finance. CReST will act as conduit for these cases and will:

- check a robust case for payment has been made and that the proposed payment is in line with policy intent;

- check the request is being made in the right format;
- act as conduit should the Finance Controls team have any questions about the payment.

Seeking Treasury approval

197. The Treasury has delegated responsibility to DWP for its own special payment scheme. However, where DWP wishes to make a payment which exceeds our authority, it must be referred to Treasury for agreement. DWP must consult Treasury about any case which:

- is novel or contentious;
- involves important questions of principle;
- raises doubts about the effectiveness of existing systems;
- contains lessons which might be of wider interest;
- might create a precedent for other departments;
- may have repercussions beyond the Department's individual business areas, or the Department as a whole;
- arises because of obscure or ambiguous instructions issued centrally;
- involves a Government Minister seeking a special payment that would not ordinarily be authorised; or
- relates to a claim for a special payment, which is the result of, or may be affected by, a period of industrial action. This will normally be limited to industrial action within the Department or its businesses.

198. Any consolatory payment over £500 (£1,000 for ICE cases) is deemed novel and contentious by Treasury. DWP does not have delegated authority to make novel and contentious payments, which must be referred to Treasury for approval. Please note, the payment may exceed £500 (or £1,000 respectively) as a one-off or when treated cumulatively throughout the complaint journey. For example, the customer was awarded £350 at tier 1 of the complaints process. At tier 2, the customer provides further information about impact, and the special payment team decide a further £200 is merited. Cumulatively, the payments now exceed £500 and require Finance and HM Treasury approval.

Business Referral

199. All proposed payments identified by the business which exceed the £500 consolatory payment limit should be referred to CReST on special payment referral form (SPEC1) for their consideration. If a payment is deemed appropriate, CReST will refer the case back to the business to prepare a business case using the Treasury template and utilising the information contained in the SPEC1.

200. Once the completed business case is received, CReST will ensure that all of the relevant information is contained and refer it to Finance for their approval before the case is referred to Treasury. CReST will act as liaison point should Finance (or Treasury, via Finance) require more information.

201. Upon receipt of Treasury approval, CReST will refer the case back the Special Payment team to process the payment as usual.

ICE Referral

202. If the ICE deems a consolatory payment in excess of £1,000 to be merited, they will issue a draft report to the Focal Point for business and CReST action. It is for the business to confirm the maladministration, and for CReST to check the proposed payment is in line with policy. Once this is agreed, it is for the Focal Point to make the case for Finance/Treasury approval.

203. The Focal Point should use the SPEC1 drafted by ICE or the ICE report to prepare a business case on the Treasury template and then forward this to CReST.

204. Once the completed business case is received, CReST will ensure that all of the relevant information is contained and refer it to Finance for their approval before the case is referred to Treasury. CReST will act as liaison point should Finance (or Treasury, via Finance) require more information.

205. Upon receipt of Treasury approval, CReST will refer the case back the business Focal Point who should notify ICE that the payment has been agreed.

Escalations

206. If we refuse to authorise the payment and you disagree with our reasoning you can follow the escalation process outlined in paragraph 68.

Recording and accounting for special payments

207. 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

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

- Decisions are appropriately and fully recorded on the SPEC1;
- Payments are recorded on SOP under the appropriate account/benefit code;
- Accurate statistical returns are collated each quarter and sent to CReST;
- Documents/records are retained in line with Finance retention policy and special payment retention policy (see paragraph 212).

Finance role

209. 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 (e.g. 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 SOP, provided the correct account codes are used. 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 SOP 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

210. CReST report the annual special payment expenditure for customers from the statistics collated / provided by the business. Those that relate to maladministration are reported each year in the Departmental Report. This information is used in PQ and FOI responses and for briefing purposes.

211. 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 SOP.

Document retention periods

212. 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 SOP. The retention period is listed in the Finance Managers Guide under SOP forms – it is currently 6 years from the date of payment. Finance asks that you keep the special payment decision and the relevant SOP form. Any supporting documents are covered by CReST's guidance.

213. 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. This is to ensure the papers are retained for ICE and PHSO investigations. The Records Management Policy provides more details.

Liaison between special payments teams

214. 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. Complaints which cut across several business areas (for example, Debt Management and Working Age benefits) should be considered in their entirety when determining redress. In such cases, it is important that the National Special Payments Team and Debt Management Special Payment Team work collaboratively to produce a single decision which considers financial redress in full.

215. 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 is 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

216. 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.

217. In either case, teams must liaise 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

218. 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

219. 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

220. 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

221. 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 provided by the National Special Payment Team