

Redress for non-financial injustice

This factsheet is guidance from the current Pensions Ombudsman, Anthony Arter, about redress for applicants for non-financial injustice caused by maladministration.

What is non-financial injustice?

- 'inconvenience' or 'time & trouble' or 'time and bother' suffered by an applicant. That is the time and effort spent by an applicant in relation to the maladministration and in having to pursue their complaint, including needing to go through a complaints process where the maladministration was both avoidable and identifiable at an earlier stage.
- 'distress' for example: concern, anxiety, anger, disappointment, embarrassment or loss of expectation that an applicant may experience. Distress can vary from mild irritation to (exceptionally) anxiety that requires medical treatment.

The non-financial injustice suffered must be caused directly by the maladministration.

How much might an award be?

Apology

It might be that we will simply make a recommendation that the respondent offers the applicant a formal apology. The applicant may be looking for vindication, a public acknowledgement that something has gone wrong for which the respondent should be sorry.

Monetary

We will always take account of the individual circumstances of the case. But similar complaints should result in consistent and broadly comparable awards. Not all maladministration inevitably leads to non-financial injustice – an easy assumption to make in the case of 'inconvenience' payments.

Please note that if the non-financial injustice is not significant; no award is likely to be made. On the other hand, if the non-financial injustice is significant then awards should properly reflect this. In line with industry practice our usual starting point for awards will be £500 or more. In most cases, redress for non-financial injustice is likely to range from £500 to £1,000. But sometimes higher awards are necessary, for example where there was ill-health or lifestyle choices were affected.

Although the courts have historically held that an award over £1,000 should only be given in exceptional circumstances, there has been a recognised general shift in attitudes to make higher awards. In 2011, we awarded £5,000 and £4,000 respectively under this head of claim in the 2011 cases of Lambden (74315/3) and Foster (82418/1).

If sufficient compensation has been made before or during the investigation we will not normally add to it. Settlements should not result in an applicant gaining an advantage.

We will not look to 'rob Peter to pay Paul'. For example, where the compensation comes out of the scheme resources but the scheme is under funded and in wind-up or is in the process of being transferred to the Pension Protection Fund.

Such payments are usually treated as a 'scheme administration member payment' and assessed to tax under the tax rules generally, and not the registered pension schemes' tax rules. For more information, go to the website for Her Majesty's Revenue and Customs.

How do we assess non-financial injustice?

We will look to take into account the particular circumstances of the individual i.e. the person's individual characteristics etc. But we will also take a wider view and ask would a reasonable person (with those characteristics) have reacted the same way. It is a matter of judgment. If an applicant claims, for example, a high level of 'distress' it does not necessarily follow that they will get compensation if the distress was not justifiable or foreseeable or credible. For example, the applicant might be angry by nature. But if the applicant has mental health problems, then it might be reasonable that they would be more likely to suffer distress.

We do not calculate inconvenience awards in direct proportion to the time spent, or based on the sort of fees that a professional person might have charged or the rate of pay of the individual concerned.

We would look for example, at whether:

- the complaint could have been avoided, if it was obvious on the facts that there was maladministration;
- there were excessive delays that were extensive or readily avoidable, by those responsible for handling the complaint;
- any inconvenience arising was on a single or number of occasions;
- any distress arising was material; and how
- the respondent handled the complaint – thoroughly, dismissively?

Where the Ombudsman makes a determination 'he may direct any person responsible for the management of the scheme to which the complaint or reference relates to take, or refrain from taking, such steps as he may specify' – section 151(2) of the Pensions Schemes Act 1993.

It is not intended to penalise a respondent but to remedy injustice genuinely suffered.