

SCOAF Financial Remedy Guidelines

Version Control

Date	Version	Details
October 2019	1.0	Draft
March 2020	1.1	Final Version including changes in-line with managing public money guidance
September 2021	1.2	Pg. 6 - Change to highlight Consolatory payments will be subject to Tax and NI contributions

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1. REMEDY

The Service Complaints Ombudsman for the Armed Forces (SCOAF) has the power to make recommendations to remedy injustice or other wrongs found during an investigation.

1.1 The purpose of remedy

The purpose of a remedy, or redress, is:

- to put the complainant back in the position they would have been had the wrong not occurred, so far as is possible; or
- to recognise the impact injustice caused by maladministration has had on the complainant.

1.2 SCOAF's powers

Whilst SCOAF has the power to make recommendations concerning the redress that should be granted, including recommending consolatory payment, these recommendations are not binding. The Defence Council can write a report to SCOAF rejecting a recommendation and outlining their reasons for doing so.

If a recommendation made by SCOAF for a consolatory payment is accepted by the Defence Council, HM Treasury has to approve this type of payment if it exceeds MOD's financial delegation or if the matter is considered contentious (i.e. it is likely to cause public or political controversy or have repercussions for Government departments).

2. PRINCIPLES FOR REMEDY

If a complaint referred to SCOAF is upheld, in whole or part, then great care needs to be taken to ensure the appropriate redress is recommended and provided quickly to prevent any further hardship or injustice.

When redress is recommended, it is because the complainant was wronged or suffered injustice. Consideration will be given to the complainant's circumstances, what redress they are seeking and why they are seeking that redress. However that does not mean that the complainant will ultimately be granted that redress. SCOAF will consider the facts of the individual case, the impact on the complainant and take into account any other financial payments made previously. SCOAF will decide which level of payment is appropriate, if any.

The Ombudsman is required in law to include reasons for each of the findings and recommendations made in an investigation report. SCOAF's investigation reports will be clear as to why the recommended redress is the best and most appropriate way

to remedy the identified wrongs and any injustice caused as a result. This is particularly important where the complainant has sought an alternative redress to the one recommended.

Any redress recommended will be:

- fair and proportionate in all the circumstances. What is fair and proportionate will vary in each case and will take into account the complainant's own actions if they contributed to, or exacerbated, the injustice or hardship suffered
- recommended according to the merits of the case, without bias towards any party to the complaint and will not be used as a punitive¹ measure against the MOD
- recorded and its implementation monitored by SCOAF

3. FINANCIAL REMEDY

SCOAF can recommend payments² as either quantifiable or non-quantifiable redress.

3.1 Quantifiable consolatory payments

In cases of direct redress there will be a financial loss which can be calculated in monetary terms, with the amount owing clearly determined. This may be a direct financial loss or the monetary value of a lost service.

If a direct redress payment can be made to remedy a quantifiable loss, then this will be recommended. Effectively, this will generally be a reimbursement of money owed which can be paid via the existing Service pay and allowances process. In these instances the Service will ask Defence Business Services (DBS) to process payment.

Examples of such redress include, but are not limited to:

- Payment of an allowance owed
- Back payment of salary at a higher rate
- Payment of training courses undertaken as part of transition for example from Service life to civilian.

¹ Not intended as a "punishment"

² By payments we mean redress, remedy, consolatory as we recognise different terms may be used

The Ombudsman does not have the power to recommend payment of compensation for negligence. Accordingly claims for personal injury or clinical negligence are legal issues which must be pursued separately through the courts.

3.2 Non-quantifiable consolatory payments

In cases of indirect redress, the loss is not financial and therefore the amount owed cannot be readily calculated or valued in monetary terms, for example distress caused by failures in the complaint process.

In these instances, in accordance with its statutory duty under section 340L of the Armed Forces Act 2006 SCOAF will state at which level (low, medium or high) the payment should be made and give reasons for the selection of that bracket.

Financial redress that is not associated with a monetary loss may be recommended where:

- The complainant is found to have suffered obvious distress or injury to feelings³
- There is no specific action that can be taken to fully remedy the wrong/injustice
- The complainant lost a benefit that had a non-monetary value, such as lost opportunity
- Where there has been delay that is unjustified and wholly excessive in the circumstances

Please note these are examples only and not a definitive list.

Such recommendations may be considered ‘novel and contentious payments’ and require approval from HM Treasury.

It is not always easy to quantify such losses and there is no fixed assessment to undertake. Distress and ‘time and trouble’ are two types of injustice where an indirect redress payment may need to be considered.

Where the loss is a benefit or opportunity that has no clear monetary value, the starting point within the redress scale set out below, is the extent of distress or injury to feelings found to be experienced by the complainant as a consequence of the subject matter of the complaint

In most cases there would be no test and a broad reasonable assessment will need to be made based on the evidence provided in an impact statement.

³ Where injury to feelings fall below the personal injury threshold

4. REDRESS SCALE - CONSOLATORY PAYMENTS

The purpose of our scale is to ensure a consistent and transparent approach can be taken by the Services when implementing a non-quantifiable consolatory payment recommendation. The onus will always be placed on the Service to decide the amount; **not** SCOAF.

It is important to note that these brackets are to be applied objectively such that similar cases adversely affecting different Service personnel are to be similarly compensated.

Consolatory payments are subject to Tax and National Insurance deductions.

Please note all examples are for illustration only.

Level	Remedy Amount	Description
Low	£500-£1000	<p>These types of injustice are where we consider that an apology alone is not sufficient remedy.</p> <p>For example:</p> <ul style="list-style-type: none">The complainant experienced a low level of obvious distress, worry and/or anxiety, combined with prolonged undue delay as a result of maladministration.
<p>Examples:</p> <ul style="list-style-type: none">The complainant experienced sleepless nights caused by the delayThe complainant demonstrated that they experienced obvious distress and/or anxiety, which has impacted on their family/work lifeLack of contact/updates from the Service and/or explanation for delay, which caused the complainant obvious distress and/or anxiety		

Level	Remedy Amount	Description
Moderate	£1000-£2000	<p>These types of injustice would have a moderate impact, for example obvious distress, worry, anxiety, which has to some extent affected the complainant's ability to lead a normal life over a significant period of time.</p> <p>For example:</p> <ul style="list-style-type: none"> • The complainant experienced a significant level of obvious distress, worry and/or anxiety • Undue delay in resolving a Service complaint which has led to uncertainty or financial hardship • Stress and/or anxiety caused by undue delay and/or poor administration (and/or poor communication) which has resulted in the complainant being unable to perform at the expected standard • Stress and/or anxiety which impacts on work and/or home life.
<p>Examples):</p> <ul style="list-style-type: none"> • Where a complainant has been wrongfully discharged which resulted in unemployment and SCOAF found the original redress was insufficient and did not factor in the impact of this on the complainant • Stress and anxiety as a result of bullying and/or harassment (otherwise than for "protected characteristics" within the Equality Act 2010), where the original redress wasn't deemed sufficient or didn't factor in this impact on the complainant 		

Level	Remedy Amount	Description
High	£2000-£3000	<p>This level of redress will be where the injustice has severely impacted on the complainant's ability to lead a relatively normal life to some extent over a prolonged period of time. Where the effects of the wrong complained about are ongoing and award in this bracket may be warranted.</p> <ul style="list-style-type: none"> • The complainant experienced a very significant level of obvious distress, worry and/or anxiety • Significant and/or prolonged financial hardship • Exceptionally⁴ poor complaint handling over several years including multiple examples of maladministration and/or significant unnecessary delays • Significant distress lasting over 3 months • Significant impact on the health of the complainant • Significant impact on work and/or home life • Failures by the Service in their duty of care to the complainant during the Service complaint process
<p>Examples:</p> <ul style="list-style-type: none"> • Serious bullying and harassment for reasons unconnected to any “protected Characteristic” as defined in the Equality Act 2010. • Very serious undue delay in the handling of a service complaint with lengthy periods of inactivity 		

Exceptional circumstances: There may be occasions, albeit rare, when a redress payment will exceed the scales outlined above. In these instances the single Services and/or SCOAF will make it clear in the recommendation that this is the expectation by referencing the Vento scale, for example, in complaints even where no breach of the Equality Act 2010 is established..

Nothing in this guidance prevents the consideration and recommendation of ‘Vento⁵’ payments in Service Complaints where a breach of the Equality Act 2010 has been established.

⁴ Only the worst complaint handling cases will result in a “high” level award and then only at the very worst at the upper end of the scale.

⁵ i.e. Vento v Chief Constable of West Yorkshire Police [2003] and case law of the Employment Tribunal / Employment Appeals Tribunal, and any Presidential Guidance issued by the Employment Tribunals (England & Wales and/or Employment Tribunals (Scotland)).

APPENDIX A - USEFUL LINKS

[Types of Discrimination](#)

HM Treasury - [HMT - Managing Public Money](#)

[Citizens Advice](#)

Advisory, Conciliation and Arbitration Service - [acas](#)

[Vento Guidelines](#)