

Crown Prosecution Service Complaints Consolatory Payments Guidance

The Crown Prosecution Service (CPS) has reviewed its Complaints Consolatory Payments Guidance. The revised policy is based on the Parliamentary and Health Ombudsman (PHSO) Principles of Good Complaints Handling¹ and Principles for Remedy². This policy also incorporates the CPS Values³ and the Complaints Handling Quality Standard⁴.

This policy should be read in conjunction with the CPS Feedback and Complaints Procedure⁵.

1. Purpose

The policy sets out the guidelines the CPS will follow when considering modest consolatory payments where there is clear evidence of uninsured material loss or severe distress caused by maladministration or poor service by the CPS.

2. General Principles

The remedy needs to be appropriate and proportionate to the material loss or severe distress suffered by the complainant.

Financial payments will only be considered where there is clear evidence of a failure by the CPS and where no practical action can be identified that would remedy the adverse effect that has been caused by the service failure.

¹ PHSO Principles of Good Complaints Handling - www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-complaint-handling-full

² PHSO Principles for Remedy - www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-for-remedy

³ CPS Values - www.cps.gov.uk/about/

⁴ CPS Complaints Handling Quality Standard – https://www.cps.gov.uk/publications/complaints_handling_and_community_engagement_standards/index.html

⁵ CPS Feedback and Complaints Procedure www.cps.gov.uk/contact/feedback_and_complaints/

This guidance only applies to service complaints made in accordance with the CPS Feedback and Complaints Procedure. Consolatory payments requests relating to legal complaints, for example relating to the decision to prosecute, selection of charges or decision to discontinue proceedings, will not be considered under this guidance and should be referred to the Civil Litigation Team in line with the procedure described in section 4.

This policy does not apply to service failures by other partner organisations such as the police, the courts or the judiciary. These complaints should be redirected to the relevant agency or department to consider.

Consolatory payments will be offered on the authority of the CPS Director of Finance and in accordance with HM Treasury's guidance on managing public money. CPS Areas must not indicate to the complainant that a modest consolatory payment may be offered until the decision has been approved by the Director of Finance.

3. Putting things right

The CPS aims to get things right but there will be occasions when we do not. In these situations it is important to acknowledge that there has been a service failure, offer an apology, and take any steps that may be available to put things right. This will usually mean amending practices to ensure that similar mistakes are not made again. In most cases this will be sufficient to resolve the complaint.

Please note that offering an apology is not an invitation for the complainant to take civil action against the CPS⁶.

⁶ Section 2 of the *Compensation Act 2006* states: 'An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty'.

4. Civil Claims

Where a complainant commences civil legal action against the CPS (arising out of our advisory or statutory functions under the Prosecution of Offences Act 1985), the matter should be referred to Civil Litigation Team within the Proceeds of Crime in CPS Headquarters. Further guidance on this subject is contained in the legal guidance under ‘Civil Proceedings against the CPS’.

5. Factors to consider when deciding if a modest consolatory payment is appropriate

- Do you accept that there has been a clear failure by the CPS to deliver its obligations within the Code of Practice for Victims of Crime⁷?
- Has the complainant suffered uninsured material loss because of a service failure by the CPS? The complainant should be asked to provide evidence of their insurance policy and excess, where appropriate.
- Do you consider that there was a “realistic” prospect that the Court would have made a compensation order had it not been for the service failure? You should consider whether the defendant would have had sufficient means, or ability to pay within a reasonable time had the order been made.
- Were other partner organisations also responsible for the service failure? If they were, is it more appropriate for the partner organisation to respond to the complaint?

⁷ Victims' Code - www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime

- Has the complainant suffered severe stress and anxiety because of the failure?

6. Determining the level of payment

Where there has been material loss, the level of payment will be determined by the Director of Finance using the evidence provided by the complainant. This may include quotes to repair/replace the property, invoices for work completed and copies of relevant insurance policies. The payment will be in the form of ex gratia payment rather than seeking to compensate the complainant for any uninsured loss incurred.

This policy should not be used to allow complainants to avoid making a claim against their insurance when a suitable insurance policy is in place and any payment will be limited to the policy excess, unless there are exceptional circumstances.

The level of payment for severe distress will be determined by the Director of Finance and will broadly be in line with the criteria applied by the PHSO.

7. Approval process for offering a consolatory payment

If the service failure identified within the complaint meets any of the criteria set out in section 5, the complaint should be referred to the Deputy Chief Crown Prosecutor/Chief Crown Prosecutor (DCCP/CCP) to consider.

If the DCCP/CCP agrees with the initial assessment, the complaint's file should be emailed to the Head of the Parliamentary and Complaints Unit, along with a background note, including an assessment of the merits of offering a consolatory payment. The Head of the Parliamentary and Complaints Unit will discuss the complaint with the Director of Finance before a decision is taken.

Whilst it may not always be appropriate to offer a payment, if the DCCP/CCP decides against referring the complaint to HQ, a note detailing their decision should be uploaded to the KIM Complaints System.

The Director of Finance will aim to provide an answer in five working days. Therefore, the Area should ensure that the complaint is referred to CPS HQ with sufficient time for the Director of Finance to consider the circumstances of the complaint before the stage one/two response is due to be sent to the complainant.

8. Consolatory payment requests considered by the Independent Assessor of Complaints (IAC)

The IAC can recommend that the CPS consider making a compensatory or modest consolatory payment in accordance with his Terms of Reference⁸.

All recommendations for financial redress made by the IAC will be considered by the Director of Finance and, where accepted, the cost will be covered by the original CPS Area.

9. Review Period

This policy will be reviewed annually⁹.

⁸ IAC's Terms of Reference - www.cps.gov.uk/contact/feedback_and_complaints/iac_tor.html

⁹ Policy last updated in January 2017.