

Leicester
City Council

WARDS AFFECTED - ALL

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

SMB	21.01.14
STANDARDS COMMITTEE	10.04.14
AUDIT & RISK COMMITTEE	15.04.14
FULL COUNCIL	26.06.14

CORPORATE COMPENSATION POLICY

Report of the Monitoring Officer

1. PURPOSE OF REPORT

To seek the agreement of the Council to the proposed Corporate Compensation Policy. The policy is required in order to allow the Council to offer appropriate redress for actions taken by officers in cases where injustice is caused. A policy will ensure that the principles are applied consistently, and that there is a proper audit trail of accountable decision-making and expenditure

- 1.1 The policy is attached as Appendix 1

2. RECOMMENDATIONS (OR OPTIONS)

- 2.1 (Standards and Audit & Risk) - To note the report and make any recommendations to Council
2.2 (Full Council) - To approve the policy as set out in Appendix 1

3. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

3.1. Financial Implications

No specific budgets are set aside for the payments that could be made under this policy. Costs would be met by the service concerned. They are unlikely to be significant in the context of the Council's finances. - Colin Sharpe, Head of Finance, ext 37 4081.

3.2 Legal Implications

The power to make payments under the proposed policy derives from:

s.92 LGA 2000 - Payments in cases of maladministration

(1) *Where a relevant authority consider—*

(a) *that action taken by or on behalf of the authority in the exercise of their functions amounts to, or may amount to, maladministration, and*

(b) *that a person has been, or may have been, adversely affected by that action,*

the authority may, if they think appropriate, make a payment to, or provide some other benefit for, that person.

(Kamal Adatia, City Barrister, Ext 37 1401)

3.3 Climate Change

None

4. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph References Within the Report
Equal Opportunities	N	
Policy	N	
Sustainable and Environmental	N	
Crime and Disorder	N	
Human Rights Act	N	
Elderly/People on Low Income	N	
Corporate Parenting	N	
Health Inequalities Impact	N	

5. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

None

6. REPORT AUTHOR

Kamal Adatia, Monitoring Officer.

Corporate Compensation Policy

It is recognised that we provide a wide range of services to a large number of customers and that sometimes things will go wrong or will not be delivered to an acceptable standard. It is important that when we have clearly been at fault that we acknowledge this and try to put things right quickly and in the most appropriate way for our customers.

1 Why recommend a remedy?

1.1 To address any injustice that has been caused to a recipient of our service/s, when it appears that we have not done something well and that there has been an apparent service failure. This process can help to draw a line under the matter and help to move the situation on, so that the relationship is repaired for the future

2 What is appropriate to consider under this policy?

2.1 This policy will normally apply to matters being considered under any of the Council's Complaint procedures, where the Council's action has, on the balance of probabilities, caused some 'injustice' to a complainant. There may also be other situations arising outside any formal Complaints procedure where it may also be appropriate to seek early local resolution using the principles of this policy, to avoid the matter escalating through the complaint process (for example, a Corporate Complaint, or a well-founded informal challenge raised by other means)

3 Power to make compensation

3.1 Section 92 of the Local Government Act 2000 gives local authorities the power to remedy injustice where it considers:

That action taken by or on behalf of the Council in the exercise of its functions amounts or may amount to maladministration, (maladministration)

and

That a person has been, or may have been adversely affected by that action (injustice)

3.2 Where both of the above conditions are met the Council may, if it thinks appropriate, make payment to, or provide some other benefit for, that person. It is possible for 'maladministration' to occur without consequent 'injustice' and vice versa and in these circumstances it will not normally be appropriate to consider awarding a payment or other benefit.

3.3 Recommendations made by the Local Government Ombudsman's service fall under alternative legislative powers contained in the Local Government Act 1974 and are not covered by this policy (see point 6.2)

3.4 The payment of compensation under this policy should not be considered to an admission of legal liability on the part of the Council in the event that the complainant may subsequently decide to take legal proceedings as a result of the complaint

4 Scope of the policy

4.1 Maladministration is failure of good administration. It involves 'process' and considers the manner in which decisions are reached or implemented (or not). Maladministration is not concerned with the nature, quality, reasonableness or merits of decisions that are otherwise properly reached

4.2 The Local Government Ombudsman's definition of 'maladministration' includes the following:

- delay
- incorrect action or failure to take any action
- failure to follow procedures or the law
- failure to provide information
- inadequate record-keeping
- failure to investigate
- failure to reply
- misleading or inaccurate statements
- inadequate liaison
- inadequate consultation
- broken promises

4.3 The notion of 'injustice' is not so clearly defined but it will relate directly to the Council's fault and may include such things as:

- hurt feelings, distress, worry or inconvenience
- loss of right or amenity
- not receiving a service
- financial loss or unnecessary expense
- time and trouble in pursuing a justified complaint

4.4 It would not be appropriate to consider use of this payments policy in cases where the complainant has suffered personal injury or damage to property as a result of alleged negligence of the Council. In such cases specific advice should be sought from Legal Services and Risk Management colleagues.

5 Who identifies the need for a remedy?

5.1 The review of any complaint by the investigating officer should be sufficiently in-depth to establish when fault has arisen and this in turn should be able to identify the injustice that has been caused to the complainant. The need for a remedy may also be identified by, or in consultation with, the Complaints Manager. It is not a prerequisite however for the Council or another investigator to have made formal “findings” of maladministration in respect of a complaint. The appropriateness of awarding a benefit or payment to put things right can be considered at any stage.

5.2 Officers do not need to consult further when a remedy is simply a matter of offering an apology or an action within the scope of the team’s usual work practice (such as arranging for a further reassessment to take place, or for a belated repair to be effected). For more significant issues however it may be appropriate to liaise with the Complaints Manager in the first instance.

6 Timing

6.2 Complaints, and therefore compensation, will not normally be considered or made unless the complaint or application is made within 3 months of the date on which the complainant first became aware of the matters alleged in the complaint, unless there are special or exceptional circumstances that would make it unreasonable to apply this rule.

6.3 The Local Government Ombudsman has powers under Part III Local Government Act 1974 to investigate and make findings and recommendations regarding maladministration accompanied by injustice, and these recommendations can include recommendations for the payment of financial compensation. The granting of a benefit or payment under the Council’s Policy will often be undertaken before a complaint is escalated outside of the Council (for example to the Local Government Ombudsman). However even once a complaint is before the LGO the Council can still consider making a payment under this policy (this time in liaison with the LGO as well as the complainant) by way of achieving a “Local Settlement” which, if agreeable, will render it unnecessary for the LGO to investigate the matter further.

7 Types of remedies:

7.2 Non-financial

There are a number of non-financial approaches to finding a suitable remedy and it is anticipated that those listed here will be the likely resolution for most complaints:

- Through an apology.
- Through practical action: the remedy may be that we need to complete the action that was expected in the first instance, to put things right.

- To review our procedures or practices, to avoid the situation arising again. The complainant should be notified of this action and of any changes made to the way we do things, as a result of their complaint.
- Through training or supervising staff; or both.
- We have access to a wide range of services and it is possible that within these services there is something that would serve as appropriate compensation. E.g. the offer of free access to a particular service for a period.

7.3 Financial

A financial remedy should only be considered as the last course of action and where it is clear that any injustice that we have caused has incurred cost or loss for the complainant. It should be clear that we are not paying for the maladministration or fault itself, but for the (wherever possible) quantifiable loss caused by the injustice. Where it is clear that we have caused injustice, but not so clear what the financial loss has been, alternative remedies should be considered first, before a financial remedy is considered on a notional basis.

7.4 Payments generally

The LGO's guidance on remedies explores the types of loss for which a complainant may be compensated financially. This can include categories such as

- (i) reimbursement for loss of a monetary benefit (e.g. Direct Payment not made, or wrongly underpaid, or other allowance not paid);
- (ii) compensation for loss of a non-monetary benefit (requiring a value judgement about quantifying the value of the lost benefit such as a lost opportunity or a loss of amenity e.g. lack of care/service to which the complainant was entitled);
- (iii) expenses incurred in pursuing a complaint
- (iv) Distress (see below)
- (v) Time and trouble (see below)

8 Distress

Distress is categorised by the Ombudsman to include: stress; anxiety; frustration; uncertainty; worry; inconvenience or outrage. Further consideration may take into account the severity of the distress caused, the length of time involved, the number of people affected (family members as well as the service user for instance) and any other professional opinion about the effects on any individual.

9 Time and trouble

This element is distinct to distress and is sometimes considered appropriate by the Local Government Ombudsman. Any payment of this nature would need to be carefully considered on the basis that the complainant has been put to considerable effort beyond that of pursuing a routine complaint. Any complaint where this is considered appropriate can be raised with the Complaints Manager in the first instance and reference will be made

to the Local Government Ombudsman's guidance on this area. Payments for time and trouble are more of a gesture and are not normally large sums

10 Authorisation for financial redress

10.2 In all cases, prior to offering financial redress the investigating officer should complete the Authorisation Form (Form 1 attached). This will help to guide the process of proposing and authorising the remedy.

10.3 Appropriate approval should be sought for all types of financial redress whether it involves a one-off payment, the waiving of charges or the write-off of debts owed to the Department. The proposed amount should be discussed with the Complaints Manager in the first instance to ensure consistency in approach. Where appropriate, reference will be made to guidance provided by the Local Government Ombudsman

- **Up to £500 - Head of Service plus Divisional Director approval**
- **£500+ - Divisional Director plus Monitoring Officer approval**

10.4 Acceptance of the redress being offered should be gained from the complainant in writing, before it is actually made. A discharge of responsibility paper (Discharge Form – Form 2) should also be completed at the point of offer. Payments should be made to the individual that has suffered as a direct result of the maladministration in the first instance.

11 Reporting arrangements for Corporate Compensation Payments

11.2 The City Barrister & Head of Standards will be notified of all payments made under this policy on a half-yearly basis.

11.3 The Audit & Risk Committee will consider payments made under the policy via annual report

12 Relevant legislation and documents considered in the formation of this policy are:

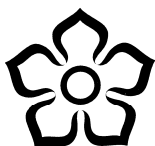
- Section 92 Local Government Act 2000
- Local Government Ombudsman Guidance on Good Practice 6 – Remedies

AUTHORISATION FORM

Complainant's name & address:	
Summary of complaint:	
Key points of the complaint that justify the remedy being proposed:	
Division affected:	
Remedy being proposed:	
Name of investigating/lead officer:	
Signature & date	
Authorisation required by:	(print names and titles)
<ul style="list-style-type: none"> • <i>Up to £500 - Head of Service plus Divisional Director approval</i> • <i>£500+ - Divisional Director plus Monitoring Officer approval</i> 	1. 2.
Signature & date	1. 2.

Complaint Office use:

Discharge form sent to complainant	Yes/No
Payment to be actioned by:	
Date payment made:	



Leicester
City Council

DISCHARGE FORM

I, **Complainant's Name** agree to accept the sum of **payment in words** in final settlement of this complaint against Leicester City Council concerning **summary of complaint issue**.

Please note

The payment of compensation in this case should not be considered to an admission of legal liability on the part of the Council

All payments under this scheme will be forfeited if any claim made is in any respect fraudulent or if any fraudulent means is being used by the claimant or anyone acting on his/her behalf to obtain payments under this scheme.

Signed :

Print.....

Date :

Please return to:

Investigating Manager's address