

Goodwill Awards

What this note covers?

This note sets out our approach to considering – in appropriate cases – whether we will make a goodwill award for any quantifiable loss, distress, inconvenience or other non-financial loss such as reputational damage which was caused to the consumer by their Member. Please note that this is not meant to be an exhaustive list. All complaints are considered on a case by case basis.

What is meant by “quantifiable loss”?

Quantifiable loss means that a consumer has suffered the loss of a product or service for a period which can be translated into a financial value. For example, if a complainant paid a Member for an advert to be placed and used, but it was not and the complainant suffered as a direct result, then it would be reasonable for the complainant to expect a refund of the actual costs to place the advert.

When does the ombudsman consider a goodwill gesture for quantifiable loss?

Where we find that a Member has done something wrong which has resulted in a quantifiable loss for the consumer, we consider whether it is appropriate to make a goodwill award for the payments the consumer may have made even though their service was unavailable for whatever reason.

What is meant by "distress" and "inconvenience?"

Distress and inconvenience often go hand in hand. Where something has gone seriously wrong, it is quite common for the consumer to have experienced both inconvenience and distress.

Distress includes embarrassment, anxiety, disappointment and loss of expectation. The degree of distress involved can vary widely. On the one hand, it can be little more than a relatively minor annoyance. But in other cases, it can cause worry, loss of sleep or even, in rare cases, prolonged ill-health.

Inconvenience can include any expenditure of time and/or effort by the consumer that has resulted from the service provider's conduct. Again, in relatively minor cases this may not amount to a significant burden. But it can include severe disruption and a great deal of wasted time.

When does the ombudsman consider a goodwill gesture for distress or inconvenience?

Where we find that a member has done something wrong, we consider whether it is appropriate to make a goodwill award for distress or inconvenience caused by the service provider – even if the consumer did not specifically ask us to do so. Of course, that does not mean that we will make an award in every case. Exceptionally, we may also make a goodwill award for distress and inconvenience caused by the member in handling the complaint particularly poorly, even if we do not agree with the underlying complaint itself.

The courts usually award compensation for distress or inconvenience only where the object of the contract is to provide pleasure, relaxation or peace of mind. ***We usually make such awards more widely, making decisions in accordance with what is fair in all the circumstances.*** We usually consider it fair that a member which has caused material distress or inconvenience or other non-financial loss should be required to make a reasonable goodwill payment for that.

What about business customers?

We treat sole traders and partnerships the same as personal customers. If the customer is the limited company, we cannot provide a goodwill award to the directors or shareholders personally.

Was it the member's fault?

Usually, the question of making a goodwill award only arises after a member, has demonstrated poor levels of customer service in its dealings with the consumer. Poor customer service might include delays, clerical or procedural errors, rudeness, incorrect or inadequate explanations, or simply a failure to respond to the consumer's reasonable requests.

We will not automatically make a goodwill payment just because the consumer has suffered some distress or inconvenience – it has to have been caused by the member.

Was the degree of distress or inconvenience material?

In many cases, even though there has been a certain amount of inconvenience and/or distress, it will not usually be appropriate for us to make a goodwill award. We will not necessarily make an award where the degree of inconvenience or distress appears to be trivial.

All of us suffer some inconvenience in our day-to-day lives and in our dealings with commercial organisations. For example, the fact that a phone line is busy or that a name is not spelt correctly can be annoying – but neither is likely to result in a goodwill award (although an award might result if the problem persists).

How did the member handle the consumer's complaint?

In addition to considering the subject matter of the complaint, it may also be relevant for us to look at the member's subsequent actions in addressing the consumer's concerns. Members are entitled to a reasonable opportunity to investigate complaints, but they are expected to meet reasonable standards when doing so.

The mere fact that the consumer has had to make a complaint is unlikely to justify a goodwill award for distress or inconvenience. But we are likely to consider making an award where the service provider has handled the complaint badly – causing the consumer distress or inconvenience – whether or not we uphold the initial subject matter of the complaint. Handling a complaint badly can include:

- excessive delay; *or*
- requiring the consumer to take additional and unnecessary steps; *or*
- provision of poor quality or misleading information

What factors are considered in making a goodwill award for distress or inconvenience?

The aim of any award we make is to compensate the consumer for the distress and inconvenience suffered. None of the awards we make are intended to act as a fine, or as a general punishment of the member.

There are no hard-and-fast rules about the amounts that will be appropriate in making awards. They will depend on the circumstances of each individual case, which might include:

- the severity of any distress;
- the degree of any inconvenience;
- the period over which the problem occurred;
- the nature of service providers actions (or inaction).

It may also be relevant to take into account the impact of the consumer's own actions. For example:

- delays in resolving a matter may have been caused partly by the consumer;
- the consumer may not have taken reasonable steps to minimise the distress or inconvenience;
- the consumer may have rejected a benefit that was available and that did not compromise the ability to pursue the complaint (for example, the service provider may have offered to undertake some remedial action but not all that the consumer wanted).

When we assess the level of any award, we consider the consumer's individual circumstances (including their state of health and age). We will consider the consumer's own assessment of the degree of distress or inconvenience they have suffered, but this will not be decisive. Some consumers may be reluctant to discuss distressing matters and may understate the degree of distress or inconvenience they have suffered, whilst others may overstate the position.

Allowance for consumer's time

In making goodwill awards, we take account of the time the consumer needed to spend to put things right. This may lead to an award if the Ombudsman concludes that the time and inconvenience justifies this. It will not however be based on any value an individual consumer might place on that time, but on reasonable recompense in the situation.

Allowance for consumer's expenses

We may also make allowance for expenses reasonably incurred – such as a reasonable estimate of the cost of phone calls and postage.

Where the member's actions have denied the consumer access to a service, the cost of obtaining that service by another means (even where the consumer did not in fact do this) can sometimes be a useful measure. For example, where a member's action denied the consumer the use of a functional internet service for a period, it could be relevant to consider the cost of accessing an alternative such as an internet cafe.

Professional fees

Awards for distress or inconvenience do not cover other costs that arise from the member's actions in handling the complaint. For example, in a few cases we may make a separate costs award for professional fees which a consumer needed to incur in bringing the complaint to us. However, such awards are likely to be rare, as it is not normally necessary for consumers to get help from professional advisers to bring a complaint.

How a member might damage a consumer's reputation

A service provider may damage a consumer's reputation in various ways. For example, damage may arise because the service provider's actions resulted in:

- a third party being misinformed about the consumer's circumstances (for example, their creditworthiness); *or*
- the improper disclosure of private information (for example, confidential records such as bank account or contact details) which may be damaging to the consumer's reputation or safety.

How we assess any goodwill awards

When we assess whether we should make a goodwill award for damage to reputation, and the amount of such award if appropriate, we apply similar considerations to those for distress and inconvenience awards. We are also likely to consider:

- how widely the information was made available;
- the nature of the information involved;
- the impact the information had; *and*
- the consumer's previous reputation.

The amount of compensation for damage to reputation may be significant where specific damage can be identified. In addition to making a goodwill award we may, where appropriate, consider requiring the member to minimise the impact of its earlier actions (by, for example, ensuring that credit-reference agency records are corrected).

How awards are made

Where appropriate, goodwill awards for distress, inconvenience or other non-financial loss will be identified separately from any awards for financial loss. In most cases the goodwill award for distress, inconvenience or other non-financial loss is likely to be payable by the member in full to the consumer. Sometimes, however, if the consumer owes money to the service provider, the ombudsman will normally direct that the award should be set off against the debt.

Scale of awards

Financial goodwill awards may sometimes be the only appropriate form of redress. But there will sometimes be cases where we are likely to consider some other form of action to be more suitable. For example, we will sometimes require the service

provider to issue an apology or to provide the consumer with an appropriate service which relates to the original problem.

Where the degree of distress, inconvenience or other non-financial loss is sufficient to warrant a goodwill award, the amount is likely to be modest. Most awards are for less than £100 and in only a small number of exceptional cases do awards exceed £500.

Below are some examples to illustrate our general approach to making awards for distress and inconvenience and other non-financial losses. The cases reflect actual decisions made by Ombudsmen. Assessing the appropriate amount to be awarded in individual cases depends on the circumstances of each case. Dependant on the consumer's circumstances, repeated or aggravated errors may cause more distress and/or inconvenience than an isolated error – as reflected in the example case studies below.

Cases where the ombudsman gives a *modest* award (less than £100)

Cases where the ombudsman gives a *significant* award (£101 - £499)

Cases where the ombudsman gives an *exceptional* award (£500 or more)

[NB examples will added]