

## Guidance: Early resolution based on remedy

### What is a Remedy?

A remedy is a means by which a hardship or injustice caused can be put right.

Remedy may be offered at any stage before, during or after a complaint has been made and investigated. The Ombudsman may therefore consider if a sufficient remedy has already been offered.

Recommendations made by the Ombudsman are 'remedies' but in individual cases an agreed remedy may lead to a complaint being withdrawn and satisfying the complainant.

### When is a remedy appropriate?

A remedy is appropriate when it is proportionate to the wrongdoing and puts things right, thereby resolving a dispute. Each case must be treated on its own merits and a remedy should never be forced on a complainant.

To assess the appropriateness of a remedy being offered an Investigating Officer should consider:

- What has gone wrong?
- Can it be put right?
- What would the complainant like to happen?
- How has the complainant been adversely affected?
- Did the complainant contribute, for example by their actions, to what happened?
- What remedy would be proportionate, appropriate, and reasonable in the circumstances?

In some situations, matters can be 'put right' to the satisfaction of the complainant with the willing cooperation of the complaine. However, there are some situations in which a remedy is inappropriate. Such situations include instances where there is a serious breach of a prisoner's human rights, an ongoing impact on the prisoner's

wellbeing or a disciplinary sanction wrongly applied. A remedy must be proportionate.

### **Fairly seeking a remedy**

To ensure fairness the Ombudsman will consider the following forms of remedy, whether a remedy can be applied proportionately and whether it is appropriate given the nature of the complaint.

1. An apology, explanation, and acknowledgement of responsibility

In some instances, an apology can put a situation right. It can be made in person or in writing to the complainant and it should be made corporately rather than by individuals. Apologies should:

- a. Acknowledge the failure of administration, behaviour etc.
  - b. Accept responsibility
  - c. Explain clearly why it happened
  - d. Express sincere regret
2. Remedial action. Remedial action focusses on replacing what was lost. For example, financial reimbursement, repair to property, replacement of goods etc.
  3. Reparative action. Reparative action is different from remedial action in that remedial action will seek to make remedy while reparative action will acknowledge the need to go further than simply replacing that which was lost. Reparative action could take the form of, for example, reinstating a phone call and adding an additional phone call; replacing a lost item of clothing and providing additional items of clothing. Reparative action may be offered where significant distress has been experienced by the complainant or where there is a strong sense of the complainant having been treated unfairly.
  4. Agreement to review policy, procedure, or systems.
  5. A combination of the above.

*Remedy must be agreed by both parties.*

### **When to seek a remedy for the complainant**

The Ombudsman will only seek a remedy where there has been maladministration or failure of service as set out in Prison Rule 79N. The Ombudsman will not suggest a remedy where there is no wrongdoing or omission on the part of the Prison Service.

In the context of early resolution of a complaint, a remedy is a mechanism for satisfying the complainant and putting things right. A remedy can be offered or sought at any stage of an investigation and allows the complainant to move on in the confidence that concerns have been acknowledged and responded to. As this is a matter of good practice Investigating Officers will remain alert to opportunities for such early resolution with undermining the right of a complainant to proceed with their complaint.

### **Agreement and closure of 'early resolved' complaints**

Early resolution will be agreed with the complainant. A written record of the agreement will be made and recorded as 'complaint withdrawn – early resolution.'