

# Goodwill Payments Guide

## 1. Introduction

- 1.1 Independent Adjudicators (IAs) are instructed by ISCAS to adjudicate on Stage 3 complaints under the ISCAS Complaints Code of Practice (May 2013), the 'Code'.
- 1.2 Under the Code, IAs can suggest a range of remedies and have discretion to award a goodwill payment of up to £5,000.

## 2. This guide

- 2.1 The purpose of this guide is to assist IAs in deciding on the circumstances when a goodwill payment should be considered and how much to award. This guidance seeks to make sure that decisions to award a goodwill payment are proportionate, transparent, consistent, and fair.
- 2.2 IAs should use their own judgement to make decisions on goodwill payments, having in mind that each case is different and should be decided on its unique facts and merits. IAs must base their decisions on the advice provided in this guidance and provide reasons where a decision represents a departure from this guidance.
- 2.3 Once the IA has reached a decision regarding goodwill payment, they will communicate this to the complainant in the adjudication decision letter (which is copied to the ISCAS member). The IA's decision on goodwill payment is final and they will not enter any negotiation on the level of goodwill award with any of the parties.

## 3. Purpose of a goodwill payment

- 3.1 The primary purpose of a goodwill payment is to reflect any distress or inconvenience arising from the issues complained about, or as a result of pursuing the complaint. This includes inconvenience and distress that amounts to pain and suffering (for example, caused by delays in receiving treatment). See 'reaching a view on impact', page 3.

- 3.2 A goodwill payment is not awarded in every case, even where a complaint is upheld. Sometimes an IA may award a goodwill payment when the handling of the complaint has been poor, even if the underlying complaint itself is not upheld.
- 3.3 A goodwill payment is not designed to be a refund (to repay or reimburse some or all the fees paid for services) or compensation (compensating for loss, damage or injury). In some instances, a provider may offer a complainant a refund of part or all the fees they have paid. An IA cannot award a refund or compensation; they have the discretion to award a goodwill payment where they consider that the factors set out in this guide are relevant.
- 3.4 If a complaint potentially appears to have arisen because of clinical negligence and compensation is sought, and/or might be awarded if a clinical negligence claim is successfully pursued, it may be appropriate for the complainant to seek legal advice. This reflects the fact that it is beyond the complaints process to establish causation, liability or negligence, which are concepts defined by law and, therefore, tested in the courts. Participation in external independent adjudication does not prejudice a complainant's right to refer the issue to the courts, although the courts may take account of any goodwill payment that is awarded by an IA.

#### 4. Taking into account a financial offer made at stage 1 or 2

- 4.1 Complainants are sometimes offered a financial payment at stages 1 or 2 of the complaints process. The IAs may take this into account when considering evidence of steps taken to remedy the complaint. However, the IAs will not give regard to the sum previously offered when deciding on a goodwill payment award at Stage 3. This reflects that IAs may take different factors into consideration in deciding on a goodwill payment (such as compliance with the Code), which means that any award made at Stage 3 can be than the amount offered by the healthcare provider. An IA may sometimes consider that no goodwill payment should be awarded at Stage 3, even if a provider made a financial offer at an earlier stage of the complaint process.
- 4.2 Where a financial offer was made at stages 1 or 2, ISCAS will explain to the complainant that any financial offer made at an earlier stage is 'taken off the table' by proceeding to Stage 3 adjudication. The complainant will be asked by the ISCAS Management Team to confirm whether they wish to proceed with the adjudication in the light of this.
- 4.3 The discretion to award a goodwill payment is a distinct element of the Stage 3 process. It is beyond the scope of IAs to become involved in situations where complainants have withheld payment for services received, or where complainants seek refunds of fees paid. These are matters to be resolved by the healthcare provider and the complainant.

## 5. The range of goodwill payment

5.1 IAs have a discretion to award goodwill payments ranging from £50 up to a maximum limit of £5,000. There are four tiers within this range – see table.

Scale	
Tier 1	£50 to £500
Tier 2	£501 - £1,500
Tier 3	£1,501 - £3,000
Tier 4	£3,001 - £5,000

## 6. Deciding which tier is engaged

6.1 When deciding which tier is engaged, the approach set out in 6.2-6.4 will normally apply but will be balanced by IAs using their discretion and professional judgement in light of all the available evidence.

6.2 In deciding which tier is engaged, the IAs will start at the bottom (tier 0) and move across columns A to H, from left to right, of the table shown on pages 5-6. The IA will decide whether the descriptor in each box fits with the details of the complaint. Some complaints may fall across several tiers. In such instances, the higher tier may become engaged – this means the IA will consider whether the payment should fall into that tier. However, where other factors are engaged in lower tiers, this may lower the tier that is finally settled upon.

6.3 The IA will then decide where the complaint falls within the tier: i.e. at the lower end, middle or the top end. This will depend on the factors that increase the seriousness of the complaint (aggravating factors), and those that reduce the level of seriousness (mitigating factors). The aggravating factors will include the number of columns that are satisfied in that tier – for instance, if six or more of the eight columns are engaged, then the award is likely to be at the high end of that tier; if only one or two are engaged then the award will be at the lower end of the tier.

6.4 Therefore, the number of columns that are engaged and the contents within each column guide not only the tier but where within the tier the level of award falls. The IAs will then use their judgment to determine the value of the goodwill payment to be awarded, if any.

## 7. Reaching a view on impact

7.1 Column G prompts the IA to consider the impact of the complaint on the complainant, and/or their family or carers, in terms of distress, inconvenience, pain and suffering, or financial burden.

- 7.2 Sometimes complainants do not articulate the impact of the events that led them to complain, the impact on them of pursuing their complaint, or the impact is not perceived as being significant. In situations where distress or inconvenience appears to be minimal, and there is no obvious financial burden resulting from the complaint, the impact may be considered to be negligible or minor.
- 7.3 Distress includes embarrassment, anxiety, disappointment, and loss of expectation at the time of the events leading to the complaint or which is ongoing.
- 7.4 Inconvenience includes expenditure of time and/or effort that has resulted from the issues complained about (e.g. being overcharged, paying for services erroneously, turning up for cancelled appointments, protracted or delayed treatment, or being required to take additional or unnecessary steps).
- 7.5 Pain and suffering includes that arising from delays in receiving appropriate treatment, as well as a direct result of services. It is important to bear in mind paragraph 3.4, which explains the distinction between a goodwill payment arising from the complaint process, and clinical negligence and the pursuit of compensation. The complaint process can look at the same issues that may give rise to a clinical negligence claim, but a different standard (both burden and standard of proof) is considered in clinical negligence cases and a goodwill payment is not designed to be compensation. Only a court can establish negligence and liability for ongoing care.
- 7.6 The financial burden arising from the events complained about can include matters such as travel costs to attend an appointment that has been cancelled without the complainant being informed, or the costs of attending meetings to discuss the complaint.

	A: Nature of complaint	B: Quality of investigation	C: Tone of response	D: Attempts to remedy	E: Timeliness of responses	F: Compliance with the Code	G: Impact on complainant <sup>1</sup>	H: Adjudication decision
<b>Tier 0</b> <b>(No goodwill payment)</b>	Isolated problem	Evidence that complaint taken seriously. Offer made to meet with complainant to discuss concerns  Thorough investigation of concerns	Tone of responses constructive, empathetic and sincere  Systems in evidence to manage unreasonable or vexatious behaviour	Evidence of steps taken to remedy complaint at an early stage e.g. sincere apology, steps to rectify or prevent recurrence, service improvements, goodwill offer	Complaint progressed at a reasonable pace. Systems in evidence to manage delays or complications caused by complainant or a third party e.g. regulator, insurer	Compliance with all elements of the Code	None or negligible	Complaint not upheld <u>or</u> heads upheld relate to isolated problem/failing that had a negligible impact
<b>Tier 1</b>	One or more problem relating to a single episode of care	Some evidence that complaint taken seriously, but investigation minimal. No offer made to meet with complainant to discuss concerns.	Variation in tone of responses between stages 1 and 2 in terms of supporting resolution of complaint	Some attempt to remedy complaint, but remedy offered was unsuitable and lack of detail as to how acknowledged deficiencies would be addressed	Minor delays, explanation given for reason and apology. Delays caused by complainant or third party e.g. regulator, insurer	Single breach of the Code	Minor	Few heads upheld and the heads upheld are minor in their impact
<b>Tier 2</b>	More than one problem relating to more than one episode of care	Insufficient evidence that complaint taken seriously and investigation conducted	Insufficient evidence of tone of response that is supportive to the resolution of complaint (i.e.	Insufficient evidence of steps taken to remedy complaint	Significant delays, explanation lacking	More than one breach of the Code – of the same type	Moderate	Numerous heads upheld, although none of a serious nature in terms of impact

<sup>1</sup> Impact on complainant or their family or carers in terms of distress, inconvenience, confusion, pain and suffering, financial burden or protracted/delayed treatment.

			tone found lacking)					
<b>Tier 3</b>	Repeated problems of the same type occurring on more than one occasion	Flaws in investigation and in demonstrating that complaint taken seriously	Tone of responses unhelpful to the resolution of the complaint (i.e. tone is actively unhelpful)	Minimal effort to remedy complaint, or remedy offered was unlikely to remedy complaint	Significant and repeated delays, explanation lacking	Multiple breach of the Code – of different type	Serious	Numerous heads upheld, and at least one represents a serious departure from the standard to be reasonably expected
<b>Tier 4</b>	Numerous problems experienced over an extended period	Evidence that complaint not taken seriously or of a thorough investigation	Tone of responses dismissive or rude	Evidence indicates no regard given to finding a suitable remedy	Excessive and unexplained delays	Complaints handling demonstrates little compliance with the Code	Major/severe	Heads upheld represent a serious departure from the standards to be reasonably expected