



office of the
independent
adjudicator

Distress and Inconvenience

The OIA may consider whether it is appropriate to recommend a payment for distress and inconvenience. Such a payment may be recommended in addition to, or instead of, other practical or financial remedies. This may be, for example, where the student has been disadvantaged as a result of the provider's delay, or where the provider had an opportunity to resolve a complaint but failed to take it. We may also consider a student's disappointment where they have been materially affected by the provider's act or omission.

We consider each case on its own individual facts but have developed some indicative bands setting out our approach to this type of compensation. We set out below some of the factors that we may consider when deciding the level of distress and/or inconvenience and the amount of compensation to recommend. The bands are not intended to set out hard-and-fast rules about either the circumstances in which the OIA will recommend a distress and inconvenience payment or the amounts that will be appropriate when the OIA recommends this type of compensation.

The OIA will also consider the impact of the student's own actions, conduct or behaviour in assessing compensation for distress and inconvenience. This may include consideration of the following issues:

- The student's contribution to the issues that have given rise to the complaint.
- Whether the student has unreasonably refused or rejected an option that was available or offered by the provider.
- Whether the delays in resolving a matter may have been partly caused by the student.

Indicative Compensation Bands for OIA distress and inconvenience awards

Level of distress and inconvenience	Recommended compensation
Moderate	Up to £500
Substantial	Between £501 and £2000
Severe	Between £2001 and £5000

We may recommend payments over £5000 in exceptional circumstances.

Bands for awards for distress and inconvenience

Moderate

- Minor maladministration, mishandling or unreasonable handling of the complaint by the provider which has caused additional unwarranted distress and inconvenience.
- Unreasonable or avoidable substantial delays (e.g. over 6 months) which are likely to have caused some distress and inconvenience.

- Moderate delays (i.e. less than 6 months) or other procedural irregularities where there is evidence to suggest the student suffered material disadvantage.
- An act or omission of the provider has caused some distress and inconvenience in the short term (e.g. less than 6 months).
- The provider's decision in respect of the substantive element of the student's complaint was not reasonable and resulted in some distress and inconvenience.

Substantial

- Procedural flaws which led to distress and inconvenience but did not affect the outcome.
- Evidence of circumstance giving rise to a reasonable perception of bias during the internal procedures.
- Substantial maladministration which resulted in material disadvantage to the student.
- Substantial mishandling of the complaint which resulted in or caused unreasonable or avoidable substantial delay (e.g. over 6 months) where there is evidence to suggest the student suffered material disadvantage.
- The provider reached an unreasonable decision (e.g. it dismissed a complaint when it should not have) but there is no direct academic consequence for the student.
- An act or omission of the provider caused some distress and inconvenience in the long term (e.g. more than 6 months).
- The provider's decision in respect of the substantive element of the student's complaint was not reasonable and resulted in substantial distress and inconvenience.

Severe

- Procedural flaws which, if they had not occurred, may have resulted in a different outcome.
- Cogent and contemporaneous evidence to suggest that as a result of the provider's acts or omissions the student suffered from ill health.
- Major maladministration, procedural flaws, delays or other breaches of natural justice in an provider's internal process resulting in material disadvantage to the student.
- Serious interference or bias during the provider's internal consideration of a complaint or appeal.
- Provider failure to consider its responsibilities under relevant discrimination legislation or, where there is credible evidence to suggest that the provider did not have regard to disability provisions or applicable legislation.
- The provider's decision in respect of the substantive element of the student's complaint was not reasonable and resulted in severe distress and inconvenience.
- Serious and unexplained delays leading to injustice.
- Where there has been a clear material disadvantage to a student, but a practical remedy is inappropriate or impossible.

Note: each aspect of a justified complaint may be considered separately when assessing the level of award, enabling compensation to be accumulated across bands where appropriate.

Explanatory Notes

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

- Whether the provider's handling of the student's concerns has caused the student additional distress and inconvenience beyond that which would ordinarily be caused whilst raising a complaint or appeal.
- The extent of inconvenience to the student.
- The severity of any distress and the nature of any supporting evidence.
- The vulnerability of the student.
- Whether the student raised the issue of injury to feeling or distress at the time of lodging their complaint/appeal or during the internal process.
- The period over which the problem occurred - the more lengthy and protracted a process the higher the potential award.
- The number and nature of the provider's acts or omissions that have led to the complaint being considered Justified or Partly Justified.
- Whether the provider has taken steps to try to address or reduce any actual or potential distress and inconvenience to the student.
- The student's contribution to the issues that have given rise to the complaint or to the duration of the complaint.
- Whether the student has unreasonably refused or rejected an option that was available or offered by the provider.
- Whether the provider is likely to be in breach of other legal provisions, for example the Consumer Rights Act 2015.
- The status of the person(s) at the provider who were found to have caused distress and inconvenience to the student.
- Whether the provider had an opportunity to resolve a complaint but failed to take it.
- Whether an element of compensation should be payable in recognition of the time, trouble and minor costs incurred by the student in pursuing the complaint against the provider. Such payments will only usually be appropriate where the facts of the case show that time, trouble and minor costs experienced by the student were more than would routinely be required for pursuing a complaint. Examples of such cases include instances where the provider had an opportunity to resolve a complaint but failed to take it, or where information is disclosed during the course of an OIA review that was not made available to the student earlier and which, if known, could have resolved a complaint sooner. In all but the most exceptional cases, time and trouble payments will be in the moderate category.

It may sometimes be appropriate to recommend a payment for distress and inconvenience where an appeal was wrongly considered and needs to be reconsidered. However, this will depend on the prospect of success of the appeal. For example, if a student identified a clear procedural irregularity in the course of their appeal but the provider said no such irregularity occurred, the provider missed an opportunity to reconsider the case at an earlier time. In such situations, it may be appropriate to recommend a payment for distress and inconvenience. If, however, a case is referred back for reconsideration and there is a prospect of a different outcome, it would not normally be appropriate to recommend a payment for distress and inconvenience.

Delay

Specifically when considering distress and inconvenience recommendations for delay, with reference to the Good Practice Framework where appropriate, the OIA will consider:

- The length of the delay.
- Whether the student raised the issue of delay within their complaint to the provider and/or the OIA.
- Whether there is evidence of material disadvantage resulting or arising from the delay.
- Whether the provider kept the student informed during any period of delay.
- The reasonableness of the delay (e.g. was the complaint to the provider particularly complex or the representations from the student unusually long and detailed).
- Whether the delays in resolving a matter may have been partly caused by the student.
- The level of chasing done by the student and the provider's response to the chasing.