

# Investigation Report

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## Investigation of a complaint against the Department for Communities

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**NIPSO Reference: 17301**

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## **The Role of the Ombudsman**

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities. She may also investigate and report on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Where the Ombudsman finds maladministration or questions the merits of a decision taken in consequence of the exercise of professional judgment she must also consider whether this has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. The Ombudsman may recommend a remedy where she finds injustice as a consequence of the failings identified in her report.

The Ombudsman has discretion to determine the procedure for investigating a complaint to her Office.

## **Reporting in the Public Interest**

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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## EXECUTIVE SUMMARY

I received a complaint regarding the actions of the Department for Communities (the Department) concerning an email they sent to a member of the public (the complainant) on 2 November 2016.

### Issues of Complaint

I accepted the following issues of complaint for investigation:

- Whether the email from the Department dated 2 November 2016 was appropriate?
- Whether the response to the complainant dated 1 February 2017 was appropriate?

### Findings and Conclusion

I have not found maladministration in respect of:

- The content of the email dated 2 November 2016.

I have found maladministration in respect of the following matter:

- The Department did not respond adequately to the complaint.

I am satisfied that the maladministration I identified caused the complainant to experience the injustice of frustration in not having his complaint dealt with appropriately.

### Recommendations

I recommended that the Department;

- Issue an apology to the complainant, for not considering his complaint appropriately, within 1 month of the date of my final report.

- Ought to engage with NICS Human Resources to seek to review the NICS Dignity at Work policy. Currently there is no right of review/appeal against the application of paragraph 6.2 of the Dignity at Work policy. There is also no provision to conduct an internal review of those individuals whose actions have been deemed unacceptable under the policy. I request the Department update me within 3 months from the date of my final report on their progress with these issues.

## THE COMPLAINT

1. A member of the public<sup>1</sup> complained about the actions of the Department for Communities in relation to an email they had sent him. A member of staff within the Department had mistakenly forwarded a reply to the member of the public rather than to a colleague as intended. This email, written on 2 November 2016, stated *'no reply necessary – just a threat!'*
2. The member of the public subsequently complained to the Department on 3 January 2017. A response to him was issued on 1 February 2017.

### Issues of complaint

3. The issues of complaint which I accepted for investigation were:

Issue 1: Whether the email from the Department on 2 November 2016 was appropriate?

Issue 2: Whether the response to the complaint on 1 February 2017 was appropriate?

## INVESTIGATION METHODOLOGY

4. In order to investigate complaint, my Investigating Officer obtained from the Department all relevant documentation together with its comments on the issues raised by the complainant. This documentation included information relating to the Department's handling of the complaint, copies of emails exchanged between the complainant and the Department, the Department complaints procedure and the NICS dignity at work policy.

### Relevant Standards

5. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the

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<sup>1</sup> Mr John White

circumstances of the case.

6. The general standards are the Ombudsman's Principles<sup>2</sup>:

- The Principles of Good Administration; and
- The Principles of Good Complaints Handling.

7. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of those organisations and individuals whose actions are the subject of this complaint.

8. The specific standards relevant to this complaint are:

- Section 6.2 of the NICS Dignity at Work Policy
- NICS HR policy 6.11 Use of electronic Communications.
- The Department complaints procedure.

9. I have not included all of the information obtained in the course of the investigation in this report but I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings.

## MY INVESTIGATION

**Issue 1: Whether the email from the Department on 2 November 2016 was appropriate?**

### **Detail of Complaint**

10. The member of the public complained that the email sent to him (in error) on 2 November 2016 deeply offended him.

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<sup>2</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

11. I considered the content of emails and letters relating to communications between the complainant and the Department (and its predecessor the Department for Social Development (DSD)). I also considered the NICS HR Policy 6.11 Use of Electronic Communications.
12. As part of the investigation of the complaint the Department's files were examined and a chronology of communications between the DSD/Department was prepared from 8 January 2015 until 2 November 2016.
13. I have also considered the content of the email sent from the complainant to the Department on 2 November 2016 which led to the contested response. It stated: *'I reserve my legal right to release copies of all my correspondence to the media etc, including the correspondence exchanged between you and I. Therefore ... get ready to answer questions from the media and public bodies which may go much deeper than those posed by me in relation to the Department's use of The Police and Criminal Evidence Order (NI) 1989 when conducting interviews under caution with people suspected of having committed benefit fraud'*.

The recipient intended to forward this email, with his own comments, to a colleague within the Department but inadvertently replied to the complainant instead.

14. I also considered correspondence between the Department and my investigating officer during the course of the investigation.

### **The Department's response to investigation enquiries.**

15. The Department's response to the Ombudsman dated 13 March 2017 stated:
- 'The content of [the] email of 2 November 2016 must be considered in the context of (i) [the complainant's] email of the same date and (ii) the volume and content of correspondence received by the Department from [the complainant] since November 2014'.*
- 'The disparaging tone of [the complainant's] email ... is immediately evident in its opening line: "Your reply is, let's face it, nothing short of what I expected"'*.



*At point 4 in his email he describes the Department's response as both "embarrassing and very unprofessional" and "unbelievable" and directs some of this commentary towards a named official of the Department'.*

*'Significantly, [he] concludes his email by reserving his legal right to release copies of all his correspondence to the media ... and [to] "get ready to answer questions from the media and public bodies which may go much deeper than those posed by me in relation to the Department's use of PACE when conducting interviews under caution with people suspected of having committed benefit fraud"'*

*The comment of "no reply necessary - just a threat" was [the member of staff's] assessment of the further action required by the Department, specifically that further engagement ... was not warranted having regard to the remarks made by [the complainant] in his earlier email, particularly the concluding ultimatum about the release of information to the media and other public organisations. I believe this comment was understandable in the circumstances'.*

*'The Department does not share [the complainant's] assessment that such remarks are "callous and derogatory" nor does it accept his interpretation that [the] remarks amount to an 'unsubstantiated allegation that [the complainant] issued a threat to DfC'. It is clearly evident from [the] email of 02 November 2016 that he did indeed issue a 'threat' or an ultimatum ... particularly regarding his intention to share their correspondence with the media and other organisations'*

## **Analysis and Findings**

16. Having carefully considered all the evidence I am satisfied that the email sent by the Department to the complainant on 2 November 2016 was not offensive within the ordinary meaning of the NICS policy. I refer to paragraph 4.3 of the NICS HR Policy 6.11 Use of Electronic Communications which provides examples of unacceptable behaviour when using electronic communication facilities.

These include:

- a. 'harrassment or bullying;*
- b. circulation or display of inappropriate material; for example on a screensaver;*

- c. *offensive remarks or comments of a sexual, racial or sectarian nature; or*
- d. *offensive remarks or comments regarding gender, sexual orientation, religious belief, political opinion, marital status, age, disability or dependants'.*

17. I refer to section 1.5 of the above policy which gives further definition to what can be considered '*inappropriate material*'. Section 1.5 defines this as: '*material that is unwanted, unreasonable and offensive and which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment*'.
18. The email complained of did not contain any remarks or comments of a sexual, racial or sectarian nature. The email did not contain any remarks regarding gender, sexual orientation, religious belief, political opinion, marital status, age, disability or dependants.
19. I consider that the context and the background to the email being sent is also relevant to my investigation of this complaint. The complainant had been considered as having submitted a number of vexatious requests for information by the DSD in July 2015. The DSD also stopped communicating with his email address in July 2015 due to the nature and content of these emails.
20. Having considered in detail the NICS policy 6.11 Use of Electronic Communications, the complainant's email dated 2 November 2016, the Department's response and their explanation, I have not found maladministration in relation to the content of the Department's email. The relevant policy identifies the criteria to be considered as unacceptable behaviour and/or inappropriate material. I am satisfied the language used in the email is not covered by these criteria. **I therefore do not uphold this issue of the complaint.**
21. Although the complainant was disappointed in my finding of no maladministration in relation to this aspect of the complaint, he did however accept my finding. The Department also accepted my finding of no maladministration.

**Issue 2: Whether the response to the complaint on 1 February 2017 was appropriate.**

22. On 3 January 2017 the complainant wrote a formal complaint to the Department regarding the comment made in the email dated 2 November 2016. The Department responded on the 1 February 2017.

23. I have considered correspondence from the Department to my office on 13 March 2017 and responses to my Investigation Officers enquiries. I also referred to the Department complaints procedure, the NICS dignity at work policy and specifically section 6.2 which deals with harassment or bullying of staff by members of the public.

24. The Department complaints policy states that:

*'If you are unhappy with the service you receive from the Department you have the right to complain. The Department for Communities complaints policy is designed to deal with complaints in relation to the functions carried out by the department and its staff. The Department will carry out a thorough investigation into **all** complaints received and will at the very least apologise if a mistake has been made or a service has been provided at a standard below what you would expect'. The policy then lists a 2 or 3 stage process for complainants to escalate their complaint. Where complainants remain dissatisfied the policy directs the complainant to the Independent Case Examiner or me as Ombudsman.*

25. I refer to the NICS dignity at work policy. In particular at paragraph 6.2 it states:

*'If you are subjected to offensive conduct by a member of the public, you should report the incident as soon as possible to your Line Manager. As the Northern Ireland Civil Service representative at local level, it is the manager's responsibility to satisfy him/herself that the complaint is well founded and take steps to ensure that the behaviour is stopped. The manager should make the member of the public aware that his/her behaviour is unacceptable and must stop. It should be made clear that if the behaviour is not stopped, the member of the public may be excluded from*

*the office and will only be dealt with by telephone or correspondence, or the contact may be suspended or terminated. If necessary a warning letter should be sent. The manager should keep a record of the incident and the action s/he took to ensure the offensive behaviour was stopped'.*

26. In a response to my office on 13 March 2017 the Mr Leo O'Reilly, the Permanent Secretary of the Department stated: *'I first became aware of the extensive correspondence passing between the Department and [the complainant], in particular, the cessation of contact letter, in July 2015; the increasingly abusive tone of [the complainant's] correspondence; and that [he] had been reminded by the Department on at least 3 occasions about the content of his correspondence. In viewing [the] complaint against this backdrop and the continuing impact on Department staff, following consultation with Departmental Human Resources, I determined that the appropriate action was to apply the protections of the NICS Dignity at Work Policy...by terminating contact with [the complainant]. [He] was notified of my decision by letter dated 01 February 2017'.*

### **Analysis and Findings.**

27. Having carefully considered all the evidence I am satisfied that the Department did not comply with its complaints procedure. The complainant made a formal complaint by email on 3 January 2017 regarding the email sent to him on 2 November 2016. The Department replied on the 1 February 2017. In this response the issues of complaint made by the complainant were not addressed. Instead the response provided a history of the previous contact between the complainant and the Department, highlighting the extensive contact from his email address, and the content of this correspondence. It also detailed that the Department had advised him on three occasions that it expected customers to behave in a courteous and professional manner. The correspondence concluded citing the NICS Dignity at Work policy, (section 6.2). That letter indicated that the Department had decided to apply the protections afforded by this policy.

28. On 6 July 2015 the complainant was informed by the Department that it was no longer going to correspond with him due to the quantity of correspondence and abusive nature of communications from it. This was following a number of warnings

sent to him from Departmental staff on the tone and content of communications received. On the same date the Department also advised the complainant that a number of Freedom of Information (FOI) requests were being denied due to them being considered vexatious in nature. I note that correspondence between the complainant and the Department ceased between July 2015 and September 2016. However I note also that he re-established contact with the Department on the 28 September 2016 once again regarding his concerns about the standard of interviews under caution in relation to the investigation of benefit fraud. This resulted in the email being sent to him in error on the 2 November and his subsequent complaint.

29. The Department's reply to the complainant on 1 2017 February detailed that *'...section 6.2 of the NICS Dignity at Work policy addresses harassment or bullying of staff by members of the public and provides for the suspension or termination of contact in cases of offensive conduct.'...the Department has to date placed you on notice on at least three occasions that the content of your correspondence was unacceptable. Given the long history and unacceptable nature of the correspondence from you, I am writing to inform you the Department has decided to apply the protections afforded by the dignity at work policy by ceasing contact with you. The department has not taken this decision lightly, but has done so to protect its staff from being exposed to further unacceptable correspondence or other contact from you. It is for this reason that responses have not, and will not, be provided to your recent emails or any future correspondence that raises similar concerns for us.'*
30. This response, however, related to the complainant's previous correspondence regarding benefit fraud and FOI requests and not to the complaint regarding the email he received on 2 November 2016. The Department complaints process does not state that that a complaint will not be addressed due to the Department's decision to apply section 6.2 of the NICS Dignity at Work policy. Similarly there is no reference in the complaints procedure to a complainant being refused a response to his complaint because of a 'vexatious request' for information. There is no link between any of the documents. The complaint of administrative failings was an entirely separate issue from the FOI requests and other previous correspondence. I conclude therefore that the complaint ought to have been treated distinctly. The Department ought to have responded to it in accordance with its complaints

procedure. I consider it inappropriate for the Department to deny the complainant access to the complaints procedure.

31. I refer to the fourth Principle of Good Administration, acting fairly and proportionately. This principle requires that public bodies deal with people and issues objectively and ensures that decisions and actions are proportionate, appropriate and fair.
32. I note that there is no right of appeal against the application of paragraph 6.2 of the Dignity at Work Policy. I would also point out that the policy does not include any indications that there will be a review after a period. I consider it would be good practice for Departments to review the list of people considered under the Dignity at Work policy at fixed periods. To add people to a list without review seems disproportionate and should be addressed by the NICS as a matter of priority. I am also concerned about the lack of clear guidelines or a procedure to guide staff on this issue. I would expect either the NICS or each department to have in place guidance or operational procedures for staff in how to implement paragraph 6.2 of the Dignity at Work policy in relation to the unacceptable behavior of members of the public. I consider the Departments current approach does not meet the fourth principle of good administration, acting fairly and proportionately.

### **Response to Draft Report**

33. A draft report dated 7 March 2018 was forwarded to Mr O'Reilly and the complainant, for comments on factual accuracy and to provide an opportunity to provide any new information that either party might have which was not previously available and which may be relevant to my decision.
34. The complainant responded, expressing disappointment that I had provisionally found no maladministration in respect of the email to him of 2 November 2016. However, having read the rationale behind my draft decision, the complainant confirmed that he fully respected same. The complainant also confirmed that he was content with the draft findings of maladministration in respect of the Department's handling of his complaint and also my draft recommendation for service improvement and publication of my final report in the public interest.

35. The Department responded to my draft report by letter on 26 March 2018, raising the following points:

(i) They considered that in examining its complaint handling I ought to have taken into account the background to the email which was the subject of the complaint. The Department considered that this background, including the fact that the complainant had been found to have submitted vexatious Freedom of Information requests, was of 'critical importance' in determining its response of 1 February 2017. The Department was of the view that no weight had been given to this background in my draft finding of maladministration. The Department considered its response of 1 February 2017 was proportionate, appropriate and fair given this context. Further, that the complaint about the content of the email is inextricably linked to the earlier correspondence between the complainant and the Department, and its decision to cease corresponding with the complainant in relation to PACE guidelines.

(ii) They accepted that its complaints procedure does not expressly provide for vexatious requests by an individual. However it stated that it does not exclude this possibility and was not designed to account for every scenario.

(iii) They asked that I reflect on the context and specifically the content of the complainant's previous sustained correspondence with the Department and the impact of his correspondence set against the spirit of the Department's Dignity at Work policy (the purpose of which is to protect NICS staff from unwarranted and inappropriate conduct or behaviour in the workplace), and that the Permanent Secretary is mindful of his duty to staff to ensure they are protected from further unwarranted correspondence from the complainant.

(iv) Mr O'Reilly noted my concerns about paragraph 6.2 of the Department's Dignity at Work policy that there is no right of review and lack of guidance for staff which recommendations he would consider. However, he remained of the view that the decision was appropriate in the circumstances.

(v) The Department supports the principles of openness, transparency and accountability and accepted the decision to publish the final investigation report in the

public interest. The Department asked that individual staff member's names be redacted in order to protect staff.

Finally, Mr O'Reilly indicated his willingness to provide further clarification regarding his comments on the draft report.

36. In response to the Department's detailed submissions on my draft report, I sought a meeting with Mr O'Reilly to seek further clarification on the letter of 26 March 2018. A meeting was held at the Department for Communities offices on Monday 2 July 2018 with myself, the Permanent Secretary and staff present to discuss the draft findings and recommendations.

37. At that meeting, the Permanent Secretary confirmed the Department's acceptance of my recommendations and agreed to implement these within the timescales. I welcome this approach to this difficult complaint.

38. Having considered the Departments representations I consider that the failings outlined in this report constitute maladministration and have caused the complainant to suffer the injustice of not having his complaint responded to appropriately. **I therefore uphold this issue of complaint.**

## CONCLUSION

39. The complainant submitted a complaint to me about the actions of the Department.

40. I have investigated the complaint and have found maladministration in relation to the following matters:

- The Department did not respond to the complaint in accordance with its complaints policy.

41. I am satisfied that the maladministration I identified caused the complainant to experience the injustice of frustration in not having his complaint dealt with appropriately.



42. I have not found maladministration in relation to:

- The content of an email from the Department to the complainant on 2 November 2016

### **Recommendations**

43. I recommended that the Department issues an apology to the complainant within 1 month of the date of my final report for not considering his complaint appropriately.

44. I recommended that the Department ought to engage with NICS Human Resources to seek to review the NICS Dignity at Work policy. Currently there is no right of review/appeal against the application of paragraph 6.2 of the Dignity at Work policy. There is also no provision to conduct an internal review of those individuals whose actions have been deemed unacceptable under the policy. I would request the Department update me within 3 months from the date of my final report on the progress with these issues.

### **General Comments**

45. The Department provided an explanation for its response to the complaints which related to the background and context of its previous dealings with the complainant. In particular, the fact that using the Information Commissioner Office guidance the Department had held one or more of his requests to be vexatious. It is clear that the complainant had been engaged in multiple exchanges of correspondence with the Department on the subject matter of the use of PACE guidelines and that this had impacted on Departmental staff. The Department's aim to protect its staff from unwanted or inappropriate conduct and its duties as an employer are an important background to this complaint. However, I consider the issue of vexatious FOI requests to be irrelevant to my consideration of this complaint.

46. The Department remains of the view that its decision to apply paragraph 6.2 of its Dignity at Work Policy in order to protect its staff was appropriate. However, my

consideration of the issues of complaint in this case was restricted to the Department's response under its complaint procedure which clearly states it will deal with all complaints and correctly (in my view) does not refer to 'vexatious complaints'. I have provided the Department with my recommendations for service improvement in this regard and they have accepted same.

47. More generally, I believe this is a case where there is learning both for listed authorities and for complainants in the public interest. I refer in this instance to the former Ombudsman's publication 'Rights, Responsibilities and Redress (2009)'. While complainants have a right to complain, they also have a responsibility to deal with organisations and their staff with respect and courtesy in an open minded and reasonable manner. Given the passage of time since this Ombudsman publication, it is my intention to review this guidance for listed authorities and complainants when my role of Complaints Standards Authority is commenced, as provided for in part 3 of the 2016 Act.



**MARIE ANDERSON**  
Ombudsman

**July 2018**

## **.APPENDIX ONE**

# **PRINCIPLES OF GOOD ADMINISTRATION**

**Good administration by public service providers means:**

### **1. Getting it right**

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

### **2. Being customer focused**

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

### **3. Being open and accountable**

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

### **4. Acting fairly and proportionately**

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

**5. Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

**6. Seeking continuous improvement**

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

## APPENDIX TWO

# PRINCIPLES OF GOOD COMPLAINT HANDLING

**Good complaint handling by public bodies means:**

### **Getting it right**

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

### **Being Customer focused**

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

### **Being open and accountable**

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.

- Keeping full and accurate records.

### **Acting fairly and proportionately**

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

### **Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

### **Seeking continuous improvement**

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.

