

The ECB's Guide to Remedy

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Introduction

1. Where something has gone wrong in the enforcement process that has had a negative impact on the individual, steps should be taken to try to put that right.
2. Decisions about the appropriate remedy in each case can be difficult to navigate. However, decisions should be guided by the underlying principle of trying to put the individual back in the position they should have been had the error or poor service not occurred.
3. Any person who has been affected by enforcement action by an accredited enforcement firm and who is dissatisfied with the firm's response to their complaint can submit a complaint to us under our Complaints Process. This guide sets out our approach to remedying the actions of an accredited firm.
4. The complexity of decisions on remedy will vary considerably, and we have produced this guide to set out the factors we will take into consideration when determining an appropriate remedy. In all cases we will take into account any remedy that has already been provided by the accredited firm. We will only recommend an additional remedy where (1) the firm did not provide a remedy and we consider that it should have done; or (2) the firm has provided a remedy, but we are not satisfied that the remedy provided is adequate.
5. In line with our remit, we are not able to make recommendations to remedy the actions of third parties, such as the creditor.
6. This guide is not exhaustive and sets out at a high level the ECB's approach to remedy.

Types of remedy

7. There are four main types of remedy:
 - a) Apology;
 - b) Systems and processes remedy – where the remedy focuses on the wider learning to the enforcement firm from the complaint;
 - c) Personal remedy – non-financial;
 - d) Personal remedy – financial.
8. The remedy provided will depend on the circumstances of each individual complaint. A complaint could involve remedies from more than one remedy category and more than one remedy in that category if that is appropriate.

Apology

9. Where there has been an error and / or been poor service that has had a negative impact on the individual an apology should be offered.
10. We will consider whether an appropriate apology has been offered earlier in the process. For an apology to be effective, it should:
 - a) Be issued at the earliest opportunity;
 - b) Be drafted in plain language that is accessible to the reader;
 - c) Accept responsibility for the error or poor service and the impact of it;
 - d) Avoid language such as 'I apologise if you feel';
 - e) Avoid passing the buck;
 - f) Where appropriate, reflect any relevant mitigation which clarifies why the accredited firm considers it is not fully responsible for the impact of the error and / or poor service that has occurred. However, the individual's circumstances should be taken into account;
 - g) Avoid undermining someone's experience by comparing it in a positive way to the experience of others in a similar situation;
 - h) Explain why the error or poor service occurred and, where appropriate, any measures that will be taken to improve matters for the individual going forward;
 - i) Where appropriate, explain any improvements that will be made more widely as a result of the complaint.
11. Where an appropriate apology has not been offered earlier in the process, we may recommend one be given as part of a package of remedies. In some cases, an apology alone will provide an appropriate remedy.
12. Where we recommend that an apology is provided, we would expect that to be provided by someone with relevant seniority.

Systems and processes remedy

13. It is important in any complaint handling process that there is a focus on continuous improvement. Complaints provide a useful insight and an opportunity to learn and improve. The improvements can be for the individual and / or for the benefit of others.
14. Where something has gone wrong or there has been poor service, measures should be put in place to stop it from happening again. That means we will ask the accredited firm, wherever possible, to prevent the same error or poor service reoccurring for the individual.

15. We will review the complaint to identify whether any learning and improvements could be taken forward to prevent the error or poor service happening to others. This could include, but is not limited to asking the accredited firm to:
- a) Change policies, practices and procedures;
 - b) Notify relevant staff about any misunderstandings related to existing policy, practices and procedures;
 - c) Update relevant publicly available information;
 - d) Provide additional training for staff;
 - e) Check for other cases that might have been affected by the same issue and put those right even before there is a complaint.
16. We will also review the complaint to identify if there is any wider learning both negative and positive that there would be merit in sharing across the sector. Where that is the case, we will feed that back to the sector in a way that is meaningful whilst maintaining confidentiality.

Personal remedy – non-financial

Provision of an appropriate explanation:

17. The enforcement process can be complicated and difficult to understand. It is important that people subject to enforcement are aware of the action that the accredited firm is taking and why. It is also important that they understand what is required of them.
18. Where our consideration of a complaint identifies problems with the quality of the explanations that have been provided to the individual, we may ask the accredited firm to provide an appropriate explanation.
19. Where that happens, we will consider whether there has been any financial or other impact on the individual because an appropriate explanation had not been provided earlier in the process. If the lack of an appropriate explanation has had an impact on the individual, we will decide whether another remedy should also be applied. (For example, an apology and / or a consolatory payment.) We will take into account the circumstances of the individual when reaching our view.

Review a decision:

20. Our consideration of a complaint may highlight issues with the decision-making process that has been followed. In those cases, we may recommend that the decision be reconsidered in line with the proper process. For example, decisions on vulnerability, reasonable adjustments, and requests for communication in a certain way.

21. If the reconsideration of the decision results in a different decision being made, we will ask the accredited firm to assess whether there has been any financial or other impact on the individual as a result of the correct decision not being made earlier in the process. If there has been a negative impact, we will ask the accredited firm to provide the relevant remedy.
22. For example, if we found there had been failings in the decision-making process around a request for a reasonable adjustment, and the individual required adjustments to the process that were not put in place, the remedy would take account of:
 - a) Whether there had been any negative financial impact on the individual because their need for a reasonable adjustment had not been accepted earlier in the process;
 - b) Whether there has been any other impact, such as additional worry and distress or inconvenience, to the extent that it warranted a consolatory payment.
23. Even if the reconsideration of the decision does not result in a different outcome, we will consider whether there has been an impact on the individual because the process has not been handled appropriately, and this requires a remedy. (For example, unnecessary frustration and upset. We will take into account the circumstances of the individual when reaching our view.

Take any other appropriate action:

24. The action required to remedy a complaint will vary and depend on the individual circumstances of each case.
25. Non-financial remedies we might also recommend, but are not limited to are:
 - a) Progressing matters where there has been a delay;
 - b) Amending records where they contain an error;
 - c) Returning goods that should not have been removed.
26. Where we recommend that action be taken to resolve a complaint, we will also consider whether there has been any negative impact on the individual because that action had not been taken earlier in the process. If there has been a negative impact, we will make further recommendations to remedy that. We will take into account the circumstances of the individual when reaching our view.

Personal remedy – financial

Financial – adverse financial impact (including damage to property):

27. Where there has been an error or poor service in the enforcement process, this can cause an adverse financial impact. The types of impact that might be seen are:
- a) Loss of earnings;
 - b) Expenses due to the incorrect removal of a vehicle or other goods;
 - c) Damage to property;
 - d) Additional fees being added to the debt incorrectly or unnecessarily;
 - e) Unnecessary borrowing of money to settle a debt.
28. This is not an exhaustive list. If we consider there may have been an adverse financial impact caused by an error or poor service, we will request relevant and reasonable evidence to substantiate it.
29. We will also consider any explanation the individual provides explaining why they are unable to provide all the evidence that has been requested. If a reasonable explanation for not having all the relevant evidence has been provided, we will explore whether there are any alternative means of substantiating the financial impact.
30. As part of the consideration of a claim of adverse financial impact we may also consider whether the individual should have taken reasonable steps to mitigate the impact on them of the error or poor service but has failed to do so. When doing so, we will take into account the circumstances of the individual.
31. We will factor in the extent of the relevant mitigation and whether and to what extent it should reduce the value of the claimed financial impact.
32. We will set out the full reasons for our assessment of the final impact (including any decision to reduce the financial claim because of relevant mitigation) in our decision.
33. It is possible that where an item has been damaged that has sentimental value, the primary impact on the individual may be emotional, rather than the financial impact of replacing the item. In those cases, we will tailor our approach to remedy accordingly.

Financial – non-monetary impact:

34. Where something has gone wrong or there has been poor service, it can have an emotional or practical impact on an individual. For example, it can cause unnecessary worry and distress or hardship and inconvenience.
35. In some cases, an apology would constitute a suitable remedy for non-financial loss. In our daily lives, we are all inconvenienced and this can cause some frustration or upset. Cases where an apology would constitute a suitable remedy are typically ones where the error or poor service is minor in nature and relatively short-lived. In those cases, the emotional and practical impact is minimal and does not affect the person's ability to go about their daily lives.
36. Where the emotional and practical impact goes beyond what an individual might reasonably expect to manage in their day to day lives, we will consider whether a consolatory payment might also be appropriate.
37. Consolatory payments are not the same as compensation payments that might be awarded by the courts. Consolatory payments tend to be at the lower end of the spectrum, and are typically in the range of £100 to £500. We would recommend a consolatory payment for the aggravation, distress and inconvenience the accredited firm has caused.
38. Higher consolatory payments would be appropriate in cases where the impact has been severe and is more prolonged. For example, in cases where the error or poor service has had an impact on an individual's mental health.
39. In deciding on the level of consolatory payment, we will take into account all the circumstances of the case, including the claimed impact.
40. Each case will be considered on its own merits, with the individual's circumstances at the heart of any decision.
41. We will consider any financial remedy that has already been provided by the accredited firm when deciding whether a further consolatory payment is appropriate. For example, if the accredited firm has already removed the enforcement fee in full or in part to remedy the emotional and practical impact of something that has gone wrong.
42. We will set out the full reasons for the level of consolatory payment recommended in our decision.

Financial - pragmatic decision-making:

43. There may be occasions where an error or poor service has not occurred but there has been a negative impact on the individual because of the way the process works.
44. These types of situations can occur during the enforcement process because of the interplay between the accredited firm, the creditor and the person subject to enforcement. For example, in cases where the accredited firm has not been updated in time by the creditor about payments made or vulnerability issues before an enforcement agent visits and a fee is charged.

45. It can also happen where the strict application of the ECB's standards, policies and relevant legislation has resulted in an unfair outcome for the individual. For example, if the accredited firm was unaware that the person subject to enforcement needed adjustments in order to engage in the enforcement process, and so proceeded without making such adjustments, leading to fees being incurred.
46. In these types of cases, we would expect the accredited firm to review whether the individual has received the right outcome, and to either provide a remedy or work with the other parties to ensure an appropriate remedy is provided.
47. Where we consider that an individual has suffered a negative impact because of the way that the process works rather than because of a failing on the part of the accredited firm, we may ask the accredited firm to reconsider matters with a view to providing an appropriate remedy.