

## DRAFT guidance – for consultation

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# Compensation for non-financial loss

## This guidance note tells you...

This guidance note tells you the kinds of claims for compensation for non-financial loss we can consider, what we take into account when looking at these claims, and what we expect from you.

This guidance note does not deal with compensation for financial loss (eg. out-of-pocket expenses or loss of business income). We have separate guidance on [claiming compensation for financial loss](#).

Further [information on seeking compensation](#) can be found on our website.

## Claims for compensation for non-financial loss we can consider

We will usually only consider claims for compensation for non-financial loss if you are an individual and not a company. However, we may consider claims made by sole traders or partnerships.

We will only consider claims for compensation for non-financial loss if the non-financial loss flows from complaints about:

- privacy rights, where injury occurs to your feelings or humiliation has been suffered<sup>1</sup>
- any other complaint, where an unusual amount of physical inconvenience, time to resolve the complaint, or interference with expectation of enjoyment or peace of mind has occurred.

We can recommend or decide a provider pays compensation for non-financial loss even if you do not expressly ask for compensation.

We do not award compensation to punish or penalise a provider.

## The amount of compensation for non-financial loss we can award

The limits on the amount of compensation we can award are:

- A maximum of \$100,000 for complaints about privacy rights

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<sup>1</sup> We note that there will be consequential changes to the existing [guidance on non-financial loss for privacy complaints](#).

- A maximum of \$1,500 for all other complaints.

We will take a careful approach to considering whether compensation is appropriate. The amount of compensation awarded will be proportionate to the extent of the harm suffered. It is likely most awards of compensation for non-financial loss will be modest.

We may consider compensation in the form of an account credit to be appropriate, for example where there is an outstanding balance on the account.

We will consider the connection between the various events and the loss suffered. The financial limits may apply to each award of non-financial loss compensation, and in a single complaint, there may be more than one event which justifies more than one award of compensation for non-financial loss.<sup>2</sup>

## What we take into account

When considering non-financial loss compensation as a remedy, we consider:

- **Reasonable steps taken:** We will consider reasonable steps taken by you to minimise the impact your provider's conduct has had on you.
- **The impact of the conduct:** We will consider the severity and impact the provider's conduct had on you. This includes extenuating circumstances that you made your provider aware of.
- **Proportionate responsibility:** Where non-financial loss has occurred, we will consider the degree to which you and your provider separately contributed to this loss. This consideration will be used to adjust the total amount of compensation to reflect your contribution to the loss, and your provider's contribution to the loss.
- **Any other payments made:** We will take into account goodwill payments the provider may have made in connection with the circumstances of your complaint.

## What we expect from you

When we assess whether compensation for non-financial loss is appropriate, we expect you to:

- be reasonably robust in the circumstances
- accept a level of inconvenience that can be considered normal when something goes wrong
- take reasonable steps to minimise the impact your provider's conduct has on you.

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<sup>2</sup> This is consistent with the approach taken by AFCA.