

Payments Outside Scope of Statutory Entitlements Policy v11.0



Summary

Objective

Payments outside the scope of statutory entitlements are payments made by ACC to manage potential liabilities under Crown Entities Act 2004, Section 17. These payments were previously referred to as 'wrongful action' or 'ex-gratia' payments.

This page provides information on:

- criteria required for a client to be paid outside 'the scope of statutory entitlement'
- what defines a serious service failure
- what defines a financial loss
- what defines a non financial loss
- how we compensate the client

Please note that privacy breaches are not addressed through this process. All enquiries around privacy breaches and potential compensation must be addressed through the Privacy Team.

For information on payments for backdated weekly compensation, go to 'Backdated Weekly Compensation' process group folder under: Claims Management > Manage Client Payments > Operational Policies > Weekly Compensation > in Promapp.

If we consider issuing a decision to decline weekly compensation after a review/appeal or a settlement has indicated that weekly compensation should be paid, then this case must be referred to the Weekly Compensation Panel to:

- check that the decision made to decline was robust
- recommend whether a payment outside the scope of statutory entitlement should be considered (if appropriate).

Owner



Expert



Policy

1.0 Criteria for payments outside the scope of statutory entitlements

a For a payment to be made outside the scope of statutory entitlements, the following criteria must be met:

- ACC committed a serious service failure, and
- the client experienced a measurable financial loss because of ACC's actions, or
- the client experienced a non-financial loss because of ACC's actions.

If you receive a payment request that can't be resolved through statutory entitlement, and ACC runs the risk of court action due to the service failure, you should prepare a submission.

2.0 Serious service failure

a Service failures can occur when:

- a client's entitled to a payment, but for some reason this wasn't identified early enough
- the client isn't entitled to a payment but we've incorrectly advised them they are.

Both of these scenarios could result in a loss for the client. If they request payment from what they see as a service failure, we first need to see if this can be resolved through statutory entitlements.

See AC Act 2001, Section 69

A serious service failure requires more than a simple omission or delay. It requires ACC to have fallen well below reasonable service standards. The following criteria normally should be met when considering if a serious service failure has occurred:

- there's serious failure by ACC to do so something that was a legislative requirement or an error in the way something was done
- the failure falls outside the scope of a normal rectifiable human error (serious error is negligent and risks putting ACC under threat of law liability).

3.0 Measurable financial loss

a If a serious service failure occurs a client may be eligible for a payment outside the scope of statutory entitlement if they either experienced a measurable financial loss and they can demonstrate the loss that was caused by the serious service failure.

b A financial loss could include:

- income that could have been earned from a rightful entitlement that's been delayed due to ACC's inaction, payment of interest on late payment of weekly compensation does not apply
- additional costs incurred by the client whilst trying to get their entitlement
- incorrect advice provided by ACC that resulted in a financial commitment for the client
- ACC committing to pay for something with no entitlement.

4.0 Non-financial loss

a A client may also be eligible for a payment outside the scope of statutory entitlements if they experience a non-financial loss and they can demonstrate the loss was caused by the serious service failure.

b A non-financial loss could include:

- a. stress, distress, anxiety experienced by the client due to the serious service failure
- b. significant inconvenience to the client
- c. damage to the client's reputation
- d. other effects

5.0 Specific claim examples

NOTE Example: Unlawful suspension of independence allowance

In *Stewart (337/2004)*, the District Court found that ACC couldn't suspend entitlement to the independence allowance on medical grounds without going through the statutory independence allowance reassessment process.

QBE stopped paying the client's independence allowance entitlement in 2005 without going through the proper process. This alone constituted a serious error. However, there was also the issue about whether or not this decision should have been made in the first place. There was a wealth of medical information supporting the client's on-going incapacity being related to the original covered injury. However, his entitlements were suspended on the basis of a file review.

The case met the criteria in relation to serious error despite the decision having originally been made by a private insurer. Once QBE files were handed back to ACC, the Corporation was obliged to notify the insurer of any liabilities within 20 days of becoming aware of them. As that timeframe had passed ACC was now liable for any payment outside the scope of statutory entitlements due.

In regards to the quantifiable loss this was calculated on the basis of the interest from the date of suspension of the independence allowance to the date it was reinstated.

NOTE Example: Rest home costs incurred

The client fractured her hip 2004. This year she returned to hospital for removal of rods. Prior to her discharge a needs assessment was completed. The assessor recommended 7 hours home help and 10 hours attendant care assistance per week.

Instead of returning home, the client was discharged to a rest home. A short time later, ACC was advised that the client had died. ACC advised the client's daughter, that ACC would pay the rest home costs.

It had since been determined that there was no injury-related need for rest home care. However, ACC had given a clear undertaking to the family that ACC would meet this cost.

NOTE Example: Reimbursement for duplicate prescription receipt if ACC loses original

A client has sent their application for reimbursement of prescription fees to their case manager. In turn, the case manager has sent the application to the processing centre.

However, after three weeks of not hearing back from ACC the client contacts the case manager, who discovers the application cannot be found.

The client now has to submit a new application. When they go to the pharmacy to get a duplicate of their original receipt the pharmacy charges them a fee for the duplicate.

This fee is not a prescription cost, but a cost incurred by the client due to ACC having lost the original application. ACC will then reimburse for the prescription fee as well as the costs of obtaining the duplicated receipt.

NOTE Example: Non-economic loss experienced due to incorrect suspension of weekly compensation a significant period of time

A client had an accident in March 1999, ACC provided entitlements up until 2002 when no further medical certificates were received.

The client contacted ACC in 2004 advising they had been unable to work since 2002 and ACC investigated whether they were incapacitated. As a result, ACC confirmed weekly compensation should be reinstated from 2002, advising the client's advocate they would need to provide medical certificates to cover that period. The claim was subsequently closed due to no medical certificates being produced.

The client contacted ACC in 2017 asking for weekly compensation from the date of the accident. ACC's Technical Specialist noted that despite incapacity being established in 2004, the focus was on obtaining backdated medical certificates rather than obtaining earnings details and paying the arrears the client was entitled to. This constituted a serious service failure, and a back payment of weekly compensation and interest was made.

Further quantifiable losses due to the serious service failure were not able to be provided, but the client's mother provided a letter stating it, "was beyond her ability to estimate the financial loss" and "The failure deprived him of his lawful entitlements for thirteen years, causing significant and complex economic and non-economic harm to him and his family".

6.0 The submission

- a** If you identify a case where it appears there has been a serious service failure resulting in a loss to the client, a submission for 'payment outside the scope of statutory entitlements' should be prepared.

The submission needs to include:

- amount the client is seeking
- details surrounding the claim
- alleged errors ACC made
- quantified losses incurred by the client if the loss is financial, and/or
- details of the non-financial impact on the client

Once the submission is prepared, and the amount sought is over \$2,000, the submission is referred onto a Resolution Specialist for their consideration. Email the submission to Customerfeedback@acc.co.nz. Resolution Services will assess the the payment outside the scope of statutory entitlements criteria have been met and decide on the appropriate compensation for the serious service failure.

For amounts under \$2,000 the submission is referred to the Client Service Leader for approval.

The Resolution Specialist will make a recommendation for amounts over \$2,000, then work with senior staff and Legal Services to gain approval for the request. If the request is not approved they will let you know and work with you to draft a letter to the client.

-  Framework for determining POSSE compensation for non-financial loss
-  Delegations framework - sharepoint

7.0 Making the payment

- a** Once written approval has been given, you need to:

1) Create a letter to the client advising them of the decision, noting that as it is a decision outside the scope of statutory entitlements, review rights do not apply (seek guidance from Resolution Services if required). Email the letter to the client if that is the preferred contact method. If posting create a NGCM Send letter task for admin.

2) Create a Purchase Order using the following details:

- Client or representative
- Entitlement code WA02
- Amount to be entered as directed by Client Service Leader/Resolution Specialist (In Unit Price field). See (b) and (c) for who can authorise the purchase order and send them an approval task.

3) Generate a Make MFP Payment task using the same details above and transfer the task to the Hamilton SC- Claimant Reimbursement queue

4) Check a week later to make sure the payment has been received by the client and if not, follow up

- b** If the amount payable is less than \$2,000 the Client Service Leader can authorise the purchase order
- c** If the amount payable is between \$2,000 and \$5,000 the Senior Resolution Specialist or Senior Review Specialist can authorise the purchase order
- d** If the amount payable is over \$5,000 the Principal Advisor, DCE Office Service Delivery can authorise the purchase order

Framework for determining POSSE compensation for non-financial loss

Step		Considerations	Action	Decision	
1. Has there been a serious service failure?	Determine if a serious service failure has occurred?	Collect all relevant information to the complaint: <ul style="list-style-type: none"> If the referral lacks information/detail go back to the person/team that referred the request and ask for clarification. If unsure around some of ACC's policies or processes and how these are applicable to the client's situation seek advice from a subject matter expert, e.g. a Technical Specialist. 	Assess the information. Advise the Principal Advisor, DCE Office, Service Delivery if it is suspected no serious service failure has occurred. They will make decision.	Proceed – if a serious service failure has occurred	Stop – if a serious service failure has not occurred
2. Impact of failure on the client	In what way has the client been impacted (stress, distress, inconvenience, anxiety, damage to reputation, or other effects)?	What are the characteristics of the non-financial harm experienced? <ul style="list-style-type: none"> Has the failure damaged the client's relationships? Has the failure impacted on the client's mental health? How much effort has the client exerted in attempting to rectify the failure? Has the client had to seek help through other means when ACC should have been providing support? Has the failure exacerbated the effects of the client's injury? How many aspects of the client's life have been impacted by the failure? Consider the circumstances unique to the client and whether the effects of the failure are more significant to them than people in a different situation? 	Collate the information the client has provided on the impact/harm experienced due to the serious service failure.	Proceed – if: <ul style="list-style-type: none"> there is a detailed account of the nature of the non-financial impact there is a detailed account of the affect this has had on the client it is reasonable to consider the serious service failure caused the harm people in comparable situations would likely be affected in a similar way. 	Stop – if: <ul style="list-style-type: none"> the client does not demonstrate the non-financial impacts other factors seem most likely to have caused the harm it is not proportionate to think the claimed impact could have been caused by the failure. Apologise for the serious service failure, but no compensation required.
	Was the serious service failure a material cause of the non-financial loss, or is it reasonable to think other factors were the predominant cause?	The POSSE payment is to compensate for the impact caused by serious service failure when statutory entitlements cannot rectify the situation, other factors are outside the scope of POSSE. Consider the holistic factors at play that could reasonably lead to the client's feeling of harm. Then attempt to isolate the impact the serious service failure could have reasonably had. In some situations, the underlying cause of the non-financial impact may not be the serious service failure, but the failure exacerbates the harm. In this situation compensation must only be to the exacerbation of the effect.	Disentangle the impacts caused by the serious service failure and other sources impacting on the client.		
	Would most people be impacted in a similar way by the serious service failure?	Consider all the characteristics of the non-financial harm experienced, the longevity of the impact, and the specific context unique to the client. Would the disclosed non-financial impact affect most people, in a comparable situation to the client, in a similar way?	Assess whether the non-financial harm is proportionate to the serious service failure. Advise the Principal Advisor, DCE Office, Service Delivery if compensation is not deemed necessary, the Principal Advisor will make decision.		
3. Factors informing compensation amount	The longevity of the impact – how long has passed since the failure?	The information initially collected when assessing the request for a POSSE will contain information on the longevity of the impact.	The length of the impact should be fairly easy to find out by examining the information the client has provided.	Consider – these factors contribute to the compensation amount.	N/A
	The scale of the impact – how severe has the impact of the failure been?	Examine the characteristics of the non-financial harm and consider the scale of the harm the client has experienced.	Assess the severity of the impact on the client.		
	Will the failure have a lasting impact on the client?	Consider the impacts to date, but also whether the failure has caused harm that will continue into the future, and whether the POSSE payment is going to rectify the impact on the client completely. If the payment (regardless of how much) will not resolve the issue it indicates the severity of the impact is very high.	Assess whether the harm caused by the failure will still impact on the client, even post compensation payment.		
	Is the nature of the failure particularly egregious in its nature?	Consider the nature of the failure: <ul style="list-style-type: none"> Was it a systemic failure of ACC's processes? Was it human error, and if so, how many times was the error done? Was there malintent from ACC staff? Was there a breach of legislation? 	Assess the nature of the failure and whether this should have an impact on the amount of compensation.		
4. Decision on compensation	How much compensation was awarded in similar cases?	Consider previous POSSE settlements for non-financial loss: <ul style="list-style-type: none"> Examine how much compensation has been given for other cases to provide context. If there are similar characteristics between cases use this to inform the amount of compensation for the client. 	Refer to previous POSSE compensation payments for non-financial loss.	Decision – decide on amount of compensation, get this approved by delegation holder, inform client.	N/A
	How should the client be compensated?	The following should be considered as a general guide for compensating a client: <ul style="list-style-type: none"> Small sum of compensation (up to \$500) – minor distress/inconvenience. Medium sum of compensation (\$500 to \$2000) – considerable distress/inconvenience. Large sum of compensation (over \$2000) – substantial distress/inconvenience. 	Determine how the client should be compensated.		

Framework for determining POSSE compensation for non-financial loss

	Do others share a similar view on the amount of compensation?	Consider other perspectives of what a reasonable amount of compensation is: <ul style="list-style-type: none">• Speak with senior colleagues on the amount of compensation they think appropriate.• Gain approval from delegation holder on the amount determined.• If possible, the client should be consulted on the amount of compensation proposed. If the client is not happy with the initial offer the amount can be negotiated if appropriate.	Consult with a senior colleague on the proposed amount of compensation, gain approval from delegation holder, consult with the client if possible/appropriate.		
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