

Accident Compensation Corporation failed to explain reasons for decision made on independent review

Legislation	Ombudsmen Act 1975
Agency	Accident Compensation Corporation
Ombudsman	David McGee
Case number(s)	291971
Date	October 2012

ACC failed to provide a full and detailed explanation as to why it declined to make an ex gratia payment as recommended by an independent reviewer

The complainant claimed ACC had been unreasonable to decline to accept a view expressed by an independent reviewer about a substantial ex gratia payment. ACC had decided to decline to make this payment but the reasons for that decision were not adequately explained.

The complainant had first complained to the Ombudsman that the review process was deficient. The Ombudsman agreed that there were aspects of that process which had been unreasonable, and ACC acknowledged the difficulties and the family's disappointment at its decision not to pay the amount recommended by the reviewer. ACC also accepted it did not follow a sufficiently robust process for initiating the independent review which contributed to a delay and unclear expectations for the family. However ACC did not consider its actions caused harm or loss that required financial redress. ACC noted that it was not bound by an independent reviewer's recommendations.

Ombudsman considered that while the decision not to pay the ex gratia sum recommended, ACC's communication of its decision had been unreasonable. The Ombudsman noted that in terms of the complainant understanding the disparity between ACC's position and the expectations raised by the independent reviewer's recommendation, the Ombudsman considered that the complainant was entitled to receive a full and detailed explanation as to why ACC did not consider any payment was warranted. In other words, there was an onus on ACC to deliver its decision with a significant degree of transparency. Without that there could

be no prospect of closure for the complainant's concerns. The Ombudsman also noted that it was not in the interests of either party including staff involved in dealing with the family on an on-going basis.

The substantive complaint about ACC's decision was not upheld. The Ombudsman considered that ACC was reasonably open to make the decision which it did – the reviewer's recommendation was not binding and it was entirely legitimate for ACC to make an assessment on its own account as to whether payment was warranted.

Following the investigation into the complaint, ACC agreed to write to the complainant to explain the reasons for the decision made. The Ombudsman told the complainant that he realised he would be disappointed by this outcome and he hoped that his decision would not prevent the complainant from re-visiting the review report and objectively considering the suggestions which it offers for a way forward. The report had also contained information about the statutory framework which governs the accident compensation scheme and ACC's operations. The Ombudsman also told the complainant that he would encourage him to deal with issues through the processes which are available, and to do so as and when they arise, rather than seek to resolve them on a historical basis.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.