

Complainant must have sufficient personal interest in complaint for Ombudsman to investigate

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| Legislation | Ombudsmen Act 1975 |
| Agency | Department of Corrections |
| Ombudsman | Sir Brian Elwood |
| Case number(s) | W42318 |
| Date | 1999 |

Ombudsman has discretion to decline to investigate where a complainant has insufficient personal interest in subject matter of complaint—no evidence to show the complainant had been given authority to complain on prisoner’s behalf about decisions taken in a prison—Ombudsman must be satisfied that the person concerned is aware of and consented to the complaint being investigated—under s 17(2)(c) of the Ombudsmen Act 1975, no investigation was undertaken

A complaint was lodged on behalf of an inmate about certain decisions taken by the prison administration concerning that inmate. When correspondence is received from someone purporting to make a complaint on behalf of another person, an Ombudsman must be satisfied that the person concerned is aware of and has consented to the complaint being investigated. In the absence of evidence to show that this is the case, section 17(2)(c) of the *Ombudsmen Act 1975* becomes relevant. This provision states:

Without limiting the generality of the powers conferred on Ombudsmen by this Act, it is hereby declared that an Ombudsman may in his discretion decide not to investigate, or, as the case may require, not to investigate further, any complaint if it relates to any decision, recommendation, act, or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman, or if in his opinion –

- (c) *The complainant has not a sufficient personal interest in the subject-matter of the complaint.*

There was no evidence to suggest that the inmate had asked the person who made the complaint to act on his behalf. Indeed, the inmate was familiar with the procedure for making complaints to an Ombudsman and had availed himself of those procedures on several occasions in the past. The complainant did not have the degree of personal interest envisaged by the section.

The discretion under section 17(2)(c) of the *Ombudsmen Act* was therefore exercised and no investigation undertaken.

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