

IRD delays verifying student's address and unreasonably charged late payment penalties

Legislation	Ombudsmen Act 1975
Agency	Inland Revenue Department
Ombudsman	Anand Satyanand
Case number(s)	W46487
Date	2002

Student believed her student loan repaid by grandmother and she had had no contact from IRD for eight years—there was no evidence the loan was repaid and IRD accepted there had been an unreasonable excessive delay in contacting student due to lack of valid address—however the IRD had no power to write off initial loan balance but following the Ombudsman's investigation, agreed to reinstate loan in the current year and cancel accumulated interest and penalties

A student obtained a student loan in early 1992. Her grandmother decided to repay the loan and obtained the necessary documentation from her granddaughter. In April 2001, the Inland Revenue Department (IRD) wrote to the student advising that according to their records she had had a student loan since 1993. It said the principal and accumulated interest now amounted to \$1,960 and payment was due immediately. IRD also noted that no income tax returns had been filed for the years 1993 to 1999 and requested they also be filed immediately.

The student firmly believed that her grandmother had repaid the loan in 1992. However, she was unable to confirm this as her grandmother had died in 1999. Following an initial discussion with IRD, the student approached her grandmother's lawyers, accountants and bankers, with a view to obtaining evidence supporting the student loan repayment. Her efforts were unsuccessful. The student asked the Ombudsman to investigate the matter on the basis that IRD's letter in 2001 was the student's first correspondence in respect of the student loan in nine years, and so IRD should accept some measure of responsibility for not having contacted her earlier.

IRD explained that the amount of the loan, plus interest, was transferred by the then Student Loan Account Manager to IRD in February 1993 for collection. A letter was sent to the student in March 1993 but was returned undelivered later that month. As a result, the address on IRD's file was invalidated. According to IRD's records, it did not hold a valid address for the student from April 1993 to January 2001. While IRD confirmed to the Ombudsman that it had attempted to issue tax returns and reminders for each of the years that the returns were required, none of these were sent because the address remained invalid. IRD commented: *'it is difficult for the Inland Revenue to keep taxpayers informed of their tax position if it does not have a correct address'*. IRD also advised that the lack of policing of the student loan was attributable to a lack of available resources at the time. It was not until April 2001 when a new address had been provided that a staff member looked at the complainant's accounts and issued a request for the outstanding returns and payment.

The Ombudsman then sought confirmation from IRD that no repayment could have occurred prior to the loan balance being transferred to it. In response IRD was unable to find any evidence that this had occurred. The Ombudsman also sought confirmation from the student of both her residential addresses and employment details over the period since 1992. Given that the lack of a valid address was central to the delay in the student being made aware of her obligations, the Ombudsman then turned to consider why it took eight years for IRD to update its files with the correct information.

The Ombudsman accepted that, while all persons having a student loan are required to file an annual tax return, the student in this case truly believed that her student loan had been repaid and as a result, she would not have been aware of that obligation. However, the complainant also had tax obligations in respect of wages she received over that period. The Ombudsman noted that the income level above which all salary and wage earner taxpayers were required to file a tax return in 1996 was \$20,000 and, according to income details provided to IRD, the student's income for that year was over \$27,000 and increased in subsequent years. Yet the student did not file returns for those years which would have included details of her correct address. Had she done so, IRD could have clarified the student loan position back in 1996.

The Ombudsman sought the student's comments. She responded that she was unaware that she had an obligation to put in a tax return in 1996 because she believed she was under the threshold.

Overall the Ombudsman considered the student had been unreasonably disadvantaged by IRD's omission to take actions which were readily available to it to clarify the student loan position with her. While there was no evidence to show that her grandmother repaid or took steps to repay the student loan, the fact that no contact was achieved with the complainant prior to the death of her grandmother meant that the position was not able to be resolved. IRD's explanation did not, in the Ombudsman's opinion, justify the lack of contact by IRD over an 8-year period. The Ombudsman concluded IRD's inaction was unreasonable in terms of section 22(1) of the Ombudsmen Act and he invited IRD to review the student's loan position.

IRD agreed to do so. It noted that by law, writing off the loan balance was not an option. Further, while it accepted that the situation was unfortunate, in the absence of proof of payment it must collect the returns and debt due as it would for all other taxpayers in a similar

situation. However, IRD was prepared to reinstate the student's debt in the current year at the amount at which it was initially transferred to IRD in February 1993. As a result, accumulated penalties and interest were cancelled and there was no requirement for the student to complete the outstanding back-year returns previously requested.

Comment

An issue that arose on initial consideration of this complaint was whether IRD's delay meant that pursuing collection of the student loan debt would be barred under the Limitation Act 1950. However, the operation of section 163 of the *Tax Administration Act 1994* (no limitation of action to recover tax) in conjunction with section 46 of the *Student Loan Scheme Act 1992* (recovery of repayment obligation), led the Ombudsman to conclude that no statutory bar applied in the circumstances of this case.

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