

Ministry of Social Development's Advisory Panel will make administrative change as a result of complaint

Legislation	Ombudsmen Act 1975
Ombudsman	Leo Donnelly
Case number(s)	407470 (previously unpublished)
Date	2017

Complaint about MSD CEO's Advisory Panel—MSD appointed panel outside governing terms of reference—Chair of Panel was formerly employed by Child Youth and Family (CYF)—Ombudsman found composition reasonable in the circumstances but on second matter, that the Panel should have in its reports a record of consideration of compensation requests and reasons why payment would/would not be recommended

Complaint about composition of Advisory Panel as well as whether MSD had all available information to make a decision on complainant's request for compensation. Following his investigation, the Ombudsman concluded that although the Panel was not comprised of three members, as set out in the terms of reference, he was satisfied that before the Panel hearing took place, the complainant and her advocate were provided with the Terms of Reference and all other relevant information necessary to make a decision whether to object to the fact that there were only two Panel members, including the Chair. The Ombudsman did not consider that the quorum of two panel members resulted in an unfair hearing of the complainant's complaints. The Ombudsman also found that the appointment of the Chairperson (who had previously worked at CYF), was not unreasonable as there was no evidence to show that this appointment resulted in actual bias or perceived bias in favour of the Ministry.

However, the Ombudsman was critical of the fact that the Panel did not appear to consider the complainant's request for consideration of compensation. The Ombudsman advised MSD that it should reconvene to discuss the matter and, if it was not to be offered, the Panel should explain the reasons why. MSD agreed to take this step.

The issue was not whether compensation should or should not be recommended but whether the Panel properly considered the matter. As the Ombudsman noted, it is relatively common for complainants to ask for compensation at hearings before the Panel.

The Ombudsman suggested to MSD that it advise its Panels to note explicitly in their reports where such a claim has occurred, and that it has been considered as part of its deliberations. The Panel should also set out reasons in their reports to explain why a claim for compensation would not be recommended. MSD accepted the Ombudsman's suggestions in this regard and undertook to ensure that this will happen in future.

Although this particular complaint was not sustained, the concerns raised about the Panel's apparent omission to consider the compensation request, did result in an improvement to MSD's administrative practice.

Comment

The MSD CEO Panel is now a function of the new Ministry for Children (Oranga Tamariki) and as such is part of a wider review of that agency's complaints systems.

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