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| Ministry of Social Development has no authority to require beneficiary to appoint agent  |
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| Legislation Ombudsmen Act 1975 Ombudsman Mel Smith Case number(s) W45758Date 2002 |

*Illiterate beneficiary preferred to communicate verbally, frequently and often vociferously—the Ministry arranged for beneficiary’s solicitor to become agent—Ombudsman sought advice from Ministry as to authority it was relying on to request appointment of an agent—the Ministry confirmed there was no specific legislative authority— Ombudsman formed view that requirement unreasonable—complainant revoked agency and dealt directly with Ministry again*

A complainant receiving a number of entitlements from the Ministry of Social Development was having difficulty communicating with the Ministry’s Work and Income office about ensuring that he was receiving the maximum assistance through the benefit system. Much of the information required was in written format or needed to be verified by documentation, and the complainant was illiterate, preferring only to communicate verbally and often vociferously.

Ministry staff advised the complainant’s solicitor of their concerns. In response the solicitor agreed to complete an ‘agent’s form’ which gave him, as agent for the complainant, the following rights:

* to receive payment of the whole of the benefit or other income support the complainant was entitled to receive;
* to receive correspondence and other information relating to his income support; and
* to act on his behalf in relation to all matters affecting his income support.

The complainant signed the agent’s form in confirmation that he understood its contents. However, despite agreeing to appoint his solicitor as his agent, the complainant continued to call the Ministry on a frequent basis for information about his entitlements. According to Ministry records, it had received in excess of 60 telephone calls from the complainant. The Ministry wrote to the complainant advising that it considered his frequent enquiries were impeding its ability to deal with his case and, given he had signed the agent’s form, Ministry staff had now been instructed to communicate only through his solicitor.

However the complainant replied that, when he signed the form, it was never his intention to give his solicitor sole authority to deal with the Ministry. Rather he only signed the authority so that he didn’t have to go back and forth signing papers. In any event, the complainant’s solicitor was assisting him through the legal aid scheme which would not pay for his dealings with the Ministry. The complainant could not afford any ongoing fees that were not related to legal aid. Therefore the Ministry’s decision effectively barred him from any communication with it regarding his income support.

The complainant was of the view that this was unfair and he asked the Ombudsman for assistance. In particular, he complained that the Ministry had not advised him under what authority its decision to require him to communicate only through his solicitor was made, nor had it advised him of any rights of review or appeal.

After considering the circumstances of this complaint, the Ombudsman acknowledged that the complainant was in a difficult position.

The Ministry’s decision clearly affected the complainant’s ability to ensure that he was receiving adequate and appropriate benefit entitlements. Further, the Ombudsman had received this complaint in December. He therefore considered it a priority that the complainant was assured of receiving his correct income support before Christmas. The Ombudsman decided first to approach the relevant Service Manager informally for advice as to what options were open to resolve the situation in the short term. In response, the Ministry agreed to put the complainant on an interim special benefit before Christmas which would also include his rent.

The Ombudsman then requested the Ministry to provide him early in the New Year with its response to the outstanding complaint that it was unreasonable for it to require all communications about his entitlements to be made through the complainant’s agent, particularly when the complainant had not been advised of the authority under which the Ministry was acting.

The Ministry preferred to respond formally to these complaints. It advised that it had considered the appointment of an agent to be a solution to the difficulties it had encountered when dealing with the complainant directly but acknowledged that there was no specific legislative authority that allowed it to request such an appointment. Rather the Ministry said it relied on:

* the law of agency; and
* the fact that the complainant had agreed to the appointment of his solicitor as his agent by signing the relevant form for the specific purpose of administering his benefit and to assist in the relationship between the complainant and the Ministry.

However, the Ministry did not consider there had been any disadvantage to the complainant as a result of its decision as, during the period when the agent was appointed, the complainant continued to contact the Ministry’s staff by telephone on a very frequent basis.

The Ministry also advised that there was no right of review or appeal against the ‘decision’ to appoint an agent. The complainant was free to revoke the authority at any time. The Ombudsman was advised by the man that he had since revoked the authority. As a result, he had returned to dealing directly with the Ministry.

After considering the Ministry’s response, the Ombudsman arranged a meeting with its officials to discuss the issue further.

The Ombudsman sustained the complaint. However, given the man’s decision to revoke his solicitor’s authority, the Ombudsman did not consider it necessary to make a formal recommendation.

The Ministry accepted the Ombudsman’s decision and advised that it would review its policies and requirements in relation to the use of agents.

*This case note is published under the authority of the* [*Ombudsmen Rules 1989*](http://legislation.govt.nz/regulation/public/1989/0064/latest/DLM129834.html?src=qs)*. 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.*