

Earthquake Commission's handling of a claim unreasonable in the circumstances

Legislation	Ombudsmen Act 1975, Earthquake Commission Act 1993
Agency	Earthquake Commission
Ombudsman	Chief Ombudsman Peter Boshier
Case number(s)	370874
Date	October 2016

Whether the Earthquake Commission (EQC) had handled a claim for drapes and carpets in a reasonable manner—Chief Ombudsman found aspects of EQC's handling of the matter to have been unsatisfactory

The complaint was made about whether EQC should have accepted the claim for carpets and drapes. It was noted that the complainant was provided with conflicting and inaccurate advice over many months as to the fate of this claim. EQC agreed to apologise to the complainant for its overall failure to provide a reasonable level of service in respect of this claim.

With regard to the decision to decline the claim, the Chief Ombudsman concluded that it was reasonably open to EQC to do so given that the complainant had no contents insurance on the property, and no further entitlement under his building policy given the cap payment which had already been made. In reaching this conclusion, the Chief Ombudsman also had regard for the fact that prior to lodging his carpet and drapes claim, the complainant had forfeited his building insurance claims to the Crown, having elected option 1 of the CERA offer.

Central to the complaint is information which the complainant had allegedly received from EQC in response to his telephone enquiries about whether he was entitled to claim for drapes and carpets in his particular circumstances, that is, the property had been tenanted and he had building but no contents insurance. The complainant said that the telephone call lasted approximately 45 minutes while the person to whom he spoke sought advice from her supervisor. The advice was that as the property would be demolished, he was entitled to claim for carpets and drapes under his building policy, and it was irrelevant that he did not have contents insurance. EQC had not been able to find any record of this particular enquiry by the complainant. Irrespective, the Chief Ombudsman found that the available records disclose significant deficiencies in EQC's handling of the complainant's claim and related enquiries. Furthermore, it was the Ombudsman's understanding from EQC that once it had considered the

complainant's property a total loss following the February 2011 event and a CAP payment was made, this had the effect of closing all his building claims with EQC. In these circumstances his claim for carpets and drapes could not be considered under his building claim, but it could be considered under a valid insurance policy covering contents at the time of loss. In the event, the complainant did not have such a policy. However, notwithstanding the disclosure that the complainant did not have contents insurance, and the fact that he had already been paid the maximum amount under his building insurance on the basis that the house was a total loss, it seems that the officers who dealt with the complainant's enquiries about his carpets and drapes claim failed to tell him that it would not be approved. While there may have been an attempt to do so in a telephone call, the position as stated in the notes of the conversation with the complainant on that date appears to have been undermined or at least muddied, in subsequent conversations with him. It might be considered that those conversations and the requests for the complainant to supply certain information to enable his claim to be processed, were misleading. The complainant might have reasonably believed that his claim would be approved when there was in fact no prospect of that outcome given that EQC's liability had been removed with the CAP payment and because he did not have contents insurance.

The Chief Ombudsman concluded that it was reasonable for the complainant to expect that officers dealing with his enquiries would correctly advise him as to EQC's liability in respect of his carpet and drapes claim. If EQC's position had been properly articulated at the outset, then the many telephone enquiries and actions, which the complainant felt bound to take in pursuit of the claim, may have been avoided.

While it was not possible to reach any conclusion about whether it was reasonable for the complainant to rely on the alleged advice in deciding upon the Crown offer on his property as presented by CERA, the complainant was advised in the terms he has stated, namely that as the property was to be demolished he was entitled to claim for carpets and drapes under his building insurance policy and it was irrelevant that he did not have contents insurance, it would seem that this advice was not fully accurate. It omitted to mention that the CAP payment for the February event effectively eliminated all his other building claims.

Overall, the Chief Ombudsman had significant concerns about whether the standard of service provided to this claimant was of a reasonable standard. It seems that staff may not have properly informed themselves of the policy relating to carpets and drapes, or understood the implication of the decision to consider this property a total loss and to make a CAP payment following the February event. The flow on from this was that conflicting and inaccurate advice was provided to the claimant over many months. Therefore, there was an overall failure by EQC to handle the complainant's claim in a reasonable manner. The chief Ombudsman recommended that EQC write to the complainant to acknowledge and to apologise for the deficiencies which occurred in its dealings with him in respect of his claim. While the Chief Ombudsman accepted that EQC's report contained an apology, this was qualified and should not be.

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