

ACC has responsibility to meet statutory obligations despite uncooperative claimant

Legislation	Ombudsmen Act 1975, Accident Insurance Act 1998
Agency	Accident Compensation Corporation
Ombudsman	Sir Brian Elwood
Case number(s)	C5264
Date	2003

Refusal to compensate for alleged 'wrongful action' – independent review of case incomplete because of complainant's behaviour—treatment and rehabilitation compromised by stand-off between claimant and Corporation—complaints sustained and recommendations made but rejected by Corporation—Accident Insurance Act 1998.

The self-employed complainant lodged a claim with the Accident Compensation Corporation following an accident in 1998. He alleged it was not made clear to him by the Corporation at that time that his earnings related compensation would be minimal because his taxable income had been offset by losses on a small land holding he also operated. He said that if the Corporation had correctly advised him of this in the first place he would not have accepted the Corporation's assistance with treatment and rehabilitation. Subsequently, alleged delays, failure to act and inappropriate referrals led the complainant to blame the Corporation for a succession of financial and personal misfortunes which ultimately led to bankruptcy, marriage break-up and loss of contact with his children. The complainant's relationship with the Corporation degenerated to one of distrust, verbal abuse and threats of violence leading to a trespass order being taken against him by the Corporation and a refusal to meet with him face to face. Thereafter the complainant's contact with the Corporation was in written form or through its "Remote Claims Unit". The complainant also had literacy problems and the Corporation's refusal to meet with him led to a practical stalemate in the progress of his rehabilitation.

The Corporation agreed to seek an independent review of its management of the case after it became apparent that, despite the claimant's negative attitude and lack of co-operation, the

service provided by the Corporation had been inadequate. A retired District Court Judge was engaged to undertake the review. However, after an early indication that he had some sympathy with the complainant and was likely to find at least partly in his favour, he declined to complete the review because of a breakdown in his own relationship with the complainant. A second attempt at review by a retired senior public servant had also not progressed beyond an early stage when this person concluded that he too was unable to work with the complainant. The Corporation then of its own initiative offered the complainant a modest sum of money as a goodwill gesture and to meet with him but the conditions proposed by the Corporation were unacceptable to the complainant.

The complaints that the Corporation had failed to offer adequate recompense for "wrongful action" and had failed in the provision of adequate case management were upheld on the basis that the Corporation had a responsibility to meet its statutory obligations regardless of the belligerent and uncooperative attitude of the complainant which appeared to stem, at least in part, from his negative experiences of the Corporation's services. Recommendations were made that the Corporation should offer a more appropriate sum of money in recognition of the inadequate service the complainant had received and should agree to meet with him face to face to resolve differences over treatment and rehabilitation. The Corporation refused to accept the recommendations made but subsequently made a conciliatory approach to the complainant.

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