

Adequacy of *ex gratia* payment to remedy mistake by Customs

Legislation:	Ombudsmen Act 1975, s 9(1)(c) Passports Act
Agency:	New Zealand Customs Service
Ombudsman:	Professor Ron Paterson
Case reference:	358204
Date:	April 2015

Background

A complaint was made to the Ombudsman about the decision of New Zealand Customs Service to offer the complainant an *ex gratia* payment of \$200 for causing him to miss a flight to Australia due to minor water damage to his passport.

The complainant, who had been successfully checked in by his airline, was prevented from boarding his flight by Customs after it rejected his passport because it appeared to be damaged by exposure to water. The complainant was sent back to the airline to seek confirmation that his passport would be accepted by Australian authorities. The airline could not provide the confirmation required and the complainant was therefore not allowed to board the flight which departed without him.

As he needed to be in Melbourne the next day, the complainant had to fly to Auckland to catch the next available flight from New Zealand at 7am the following morning. He also had to obtain an emergency passport. The cost of last minute flights, overnight accommodation in Auckland and an emergency passport, was \$1143.13.

Before offering the *ex gratia* payment, Customs acknowledged that its actions were inconsistent with its procedures, that its officials omitted to test the passport in an electronic reader and that the responsibility for whether a passport is acceptable for travel purposes rests with the airline.

Investigation

1. The Ombudsman notified Customs of his intention to investigate the complaint and requested comment on the concern that, in light of Customs' acknowledged departure

from its own procedures, the amount of *ex gratia* payment offered was substantially less than the financial loss suffered by the complainant.

2. Customs initially argued that it did not accept full liability for the incident because the decision to offload the complainant was made by airline staff, and that therefore the *ex gratia* payment was adequate.
3. The Ombudsman considered the combined evidence of the complainant, the Customs officials, airline staff and airport camera footage, and was satisfied that Customs' acknowledged failure to follow its own well documented procedures was the main cause of the incident.
4. The Ombudsman formed the provisional opinion that the *ex gratia* payment was unreasonable because it did not cover the financial loss suffered by the complainant, and that the complainant was owed an apology in light of the stress caused by the incident.
5. The Ombudsman gave Customs an opportunity to comment on his provisional opinion.
6. Customs reviewed its position and agreed to an *ex gratia* payment covering the full amount of the financial loss caused and apologised in writing to the complainant.

Outcome

7. The Ombudsman concluded that the *ex gratia* payment offered had been unreasonable, but in light of the remedial action taken by Customs, no recommendation was necessary.