



Earthquake Commission not unreasonable to decline payment for engineering reports commissioned by property owner

Legislation	Ombudsmen Act 1975, Earthquake Commission Act 1993
Agency	Earthquake Commission
Ombudsman	Chief Ombudsman Dame Beverley Wakem
Case number(s)	345127
Date	March 2013

*Whether it was reasonable for EQC to decline payment for two engineering reports—
Ombudsman considered that EQC had not acted unreasonably in this respect*

The complainant considered that EQC should recompense him for two engineering reports which had been sought in 2010 on the advice of the complainant’s architect, rather than EQC.

The Chief Ombudsman noted that the EQC website updated in October 2010 stated (along with the previous information), that for repairs not considered emergency repairs, claimants should wait until a loss adjuster had inspected the property. It also stated that: ‘We (EQC) cannot guarantee any payment for work you get done or advice you obtain such as engineers’ reports done without an EQC inspection or our approval.’ The website also advised claimants that: ‘EQC generally arranges reports that it requires to assist in settling your claim. Check with EQC first if you want to be reimbursed for reports that you organise yourself, as EQC is likely to only pay for a report if it provides additional information that is required by us to assist in settling your claim.’

The Chief Ombudsman considered that the website sufficiently informed claimants about EQC’s policy regarding engineering reports and the reimbursement of any such reports. Furthermore,

EQC is required to apply and act in accordance with the detailed provisions of the Earthquake Commission Act 1993 when settling all claims. The website states that: ‘... *in the case of conflict between the information on this website and the provisions of the Earthquake Commission Act, the provisions of the Act will prevail.*’ The Chief Ombudsman noted that where any agency is

adhering to its statutory obligations, it is difficult to see that there are grounds for an Ombudsman's investigation. In fact, if it did not comply with its own legislation, it could be open to claims that it was acting unreasonably, or contrary to law for that matter.

The Chief Ombudsman noted that she appreciated the complainant's point that he was trying to limit further damage by initiating emergency repairs. However it was apparent that the true nature of the damage only became known as a result of the engineers' report which was more than two months after the Christchurch September 2010 earthquake. The Chief Ombudsman noted that she was not qualified to judge the severity of the damage to a beam but that emergency repairs may have been a safer option prior to waiting for engineers to complete their report. The complainant indicated that he had read an advertisement which did not state that all repair claims under \$10,000 still needed EQC approval. However, the Chief Ombudsman was not satisfied that this amounted to 'blatant misleading advertising'. The advertisement referred to repairs, rather than emergency repairs. While the advertisement may not have been clear, nonetheless repair work required EQC authority. In respect of emergency repairs, no authority was necessary. The reason for this was that up until 1 January 2012, emergency repairs were considered 'customer-authorised' so approval from EQC was not required.

In any event, EQC duly paid for emergency repairs for costs incurred in securing the ceiling beam to prevent further damage. In this respect, EQC considered that the repairs were emergency repairs and therefore it was fulfilling its legislative responsibilities. While the complainant claimed that the repair needed expert advice from a structural engineer to meet the building standards required for those repairs, EQC has its own assessors and if damage is severe or threatens property, an engineer would be asked to report to EQC. If EQC had required an independent report, the complainant would have incurred no cost. Unless authorised, EQC is not obliged to pay for independent engineering reports and the Chief Ombudsman could find no documented evidence to support that EQC authorised those reports.

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