

Earthquake Commission unreasonable not to settle claim in the particular circumstances

Legislation	Ombudsmen Act 1975
Agency	Earthquake Commission
Ombudsman	Dame Beverley Wakem
Case number(s)	327879 (previously unpublished)
Date	2012

Earthquake Commission (EQC) refused to proceed with contents claim without explaining to claimant, even though the claim had been assessed and approved—Ombudsman finds EQC’s actions unreasonable—complaint settled when EQC agreed to rectify its omission

The complainant believed that the Earthquake Commission’s (EQC) handling of her contents claim had been unreasonable. The claim was assessed in January 2011 and officers informed the complainant that her contents loss was agreed to and that they would arrange for payment to be made. The payment was not forthcoming and the complainant noted that she was not advised why there was a delay (until inquiries were made by the Ombudsman). The Ombudsman was told by EQC that the delay was due to EQC waiting for a declaratory judgement from the High Court in relation to claims relating to boarding houses. It appeared that as the complainant owned a number of houses that may be deemed to be boarding houses, her contents claim at the property in which she was living, was placed on hold. This was because if the High Court’s decision found that the other properties were not insured by the Act, then settlement on any outstanding claims could be used to offset the debt owed.

The Ombudsman considered EQC’s position unsatisfactory. This was because the contents claim for the complainant’s property which she personally occupied, and for which she had separate insurance cover, indicates that the claim could be reasonably be expected to be settled independently of the complainant’s other properties. The Ombudsman observed that in the event that the High Court issued a decision that boarding houses were covered, then settlement would have been delayed needlessly for almost two years.

The Ombudsman noted that EQC provided no supporting legal argument that it ‘cannot’ settle the contents claim until the High Court’s decision was known. The Ombudsman was also critical of EQC’s communications with the complainant, noting that neither the complainant nor her solicitor were told that no decision would be made on her contents claim until after the declaratory judgement.

The Ombudsman considered that EQC has acted unreasonably in this matter. The complainant should have had her contents claim settled or, at the very least, been advised why it could not proceed.

The complainant advised the Ombudsman that subsequent to the Ombudsman’s inquiries, EQC had settled the contents claim. The Ombudsman then discontinued her inquiries on the basis that her concerns about the contents claim were resolved.

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