

## Inland Revenue's policy and procedures deficient in case of child support repayments

<b>Legislation</b>	Ombudsmen Act 1975, Child Support Act 1991
<b>Agency</b>	Inland Revenue Department
<b>Ombudsman</b>	Anand Satyanand
<b>Case number(s)</b>	A10328
<b>Date</b>	2004

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*IRD reviewed child support payments for liable parent resulting in \$180 per month increase backdated 3 months—parent advised he could not pay arrears in lump sum and sought payment in instalments—IRD agreed—custodial parent complained to Ombudsman—Ombudsman reviewed instalment policy—IRD's decision made in accordance with policy—however policy did not require full disclosure or scrutiny of liable parent's financial situation—Ombudsman of view decision in this case not unreasonable as followed policy, but policy and procedures deficient and unreasonable—IRD agreed to review policy and procedures*

A mother applied to the Inland Revenue Department (IRD) for administrative review of the amount of child support being paid by her child's father (who was a staff member of IRD) towards their living costs. The child had a disability which meant that there were considerable costs in looking after him. IRD considered the matter and decided to grant a departure from the usual formula assessment of child support in the circumstances of this case. As a result, the father's child support liability was increased by approximately \$180 per month. IRD backdated this decision to the beginning of the support year which meant the father owed nearly \$550 in arrears.

Upon receiving advice to this effect, the father advised the Special Files Unit of IRD (responsible for administering child support cases involving its staff) that he could not afford to pay the arrears as a lump sum and he would look at his budget and advise what he was able to pay. The father later advised that, at best, he could make extra payments of approximately \$110 for five months on top of his regular payments. This payment arrangement was accepted by IRD and the mother was informed of this by letter.

The mother subsequently protested about this arrangement on the basis that the father *'earns a considerably higher income than [her], has no debt or hire purchase obligations...[therefore he] can easily access an overdraft or loan to meet his increased child support obligations...[whereas she] is unable to access further credit because [the child's] medical condition has limited [her] employment options'*. IRD approached the father and asked whether he was able to make the payment as a lump sum as soon as possible. He is reported to have said that he wanted to stay with the original arrangement.

The mother made a complaint to the IRD Complaints Management Service which was unsuccessful. The Ombudsman investigated: the alleged failure to require the father to substantiate by way of evidence his alleged inability to make the arrears payment in full on the due date; the decision to allow the arrears to be paid by instalments rather than as a lump sum; and the refusal to disclose the basis for this decision to the mother or involve her in it by allowing her the opportunity to present details of her situation.

IRD first referred the Ombudsman to the Child Support Act 1991 which provides for IRD to enter into instalment arrangements for the collection of child support debt from liable parents when they are unable to pay outstanding amounts in full. The Ombudsman was also given a copy of IRD's policy on negotiating instalment arrangements.

On the issue of the father's employment with IRD and how this may have affected the manner in which it dealt with him in relation to the arrears, IRD provided the Ombudsman with extracts from its Code of Conduct that applies to employees. The Ombudsman considered these and noted that they make it clear that employees have the same rights and responsibilities as any other taxpayer. They also emphasise that employees are expected to be beyond reproach in the way in which they conduct their personal affairs. Where employees are unable to pay their taxes by the due date they are required to make an alternative arrangement with the Special Files Unit of IRD before the tax is due. The Ombudsman noted that the father contacted the Special Files Unit to make an alternative arrangement to pay the backdated child support on the day before he believed it was due. The Ombudsman noted that while this was after the actual due date, it was the same date as his July liability was to be paid.

In its accompanying report on the matter, IRD advised that the relevant child support officer considered that the father would have difficulty paying the backdated payment as well as his ongoing liability and therefore had been of the view that it was appropriate to negotiate an instalment arrangement. The father offered an additional \$110 per month to clear the arrears and IRD accepted this arrangement. In this regard, IRD confirmed that the decision was made in accordance with the instalment arrangement policy which applies where a liable parent is not able to pay outstanding amounts in full. It said the policy is one which encourages flexibility and enables arrangements to be tailored to the circumstances of the individual liable parent so as to maximise recovery and ensure that the liable parent will be able to continue to meet an ongoing child support obligation.

The Ombudsman then considered the detail of this policy, noting it stated that when negotiating instalment arrangements for the payment of child support there was a need to determine that the *'paying parent cannot afford to pay a lump sum'*. In doing so, staff needed to *'ask if there are funds available in the bank, including fixed term deposits, as these can be*

*broken, or assets which the paying parents could sell or borrow against*'. On the basis of these statements, it seemed to the Ombudsman that liable parents could be expected to be directly questioned about funds that they may have in the bank before agreement is reached to enter into an instalment arrangement.

The Ombudsman then reviewed IRD's notes of its discussions with the father. While the notes record the father was very angry about the administrative review decision, they do not record any questioning about his circumstances and the extent of his ability to meet the arrears, or any part of the total amount, by way of a lump sum. Rather, IRD simply advised the Ombudsman that the child support officer 'considered' the father would have difficulty paying the arrears as a lump sum in addition to his on-going liability. As a result, it seemed the proposal put forward by the father had been accepted without question. The Ombudsman sought IRD's comments.

IRD responded that the child support officer had considered standard household expenditure, the liable parent's income, his payment history and the period of the proposed instalment arrangement. The Ombudsman again reviewed the information. However, he was not able to identify any specific evaluation of the father's circumstances against the amount of child support owing to the complainant. Further, the Ombudsman was unable to find any evidence that the length of the instalment arrangement or the quantum of payments had been negotiated. Rather, it seemed that the offer put forward by the father was accepted without question, including his refusal to deviate from it when the complainant protested about the arrangement. The Ombudsman put this to IRD.

In response, IRD advised that the father was treated in the same way as any other liable parent who seeks an instalment arrangement to clear arrears. It said that detailed information about a liable parent's financial circumstances was sought only when an officer had reason to doubt that the liable parent could not afford to pay the arrears in full. However, in cases where a liable parent has a good compliance history and pro-actively approached child support to make a payment arrangement, this was usually agreed to without seeking full disclosure of the parent's financial circumstances. In the present case, IRD maintained that the arrangement secured the payment of the arrears (albeit over an extended period of time), and the manner in which the arrangement was entered into between the child support officer and the liable parent was consistent with its policy.

The Ombudsman acknowledged that there may be a fine balance between securing a liable parent's co-operation in promptly clearing arrears and acting in a way which may cause a liable parent to avoid payment. He was also willing to accept that IRD has a continuing relationship with liable parents and the encouragement of voluntary compliance was highly desirable in terms of maximising the efficient recovery of outstanding payments. However, he considered that IRD would also have an equal interest in maintaining a positive relationship with the custodial parent. In this regard, IRD's approach may, in most instances, serve the interests of the custodial parent well by securing payment of the arrears, albeit over an extended period. However, it was the Ombudsman's view that this would be the case only if it could be shown that the liable parent's circumstances were adequately scrutinised and the facts showed conclusively that the debt could not reasonably be paid by way of a lump sum. In the absence

of this type of scrutiny, the Ombudsman thought it could be argued that the policy does not serve the interests of the children for whose care such payments are intended, especially if the custodial parent is in a financial situation that is even more stretched or pressing than the liable parent. In other words, if liable parents' resources are not fully explored, and accessible funds such as term deposits or other investments are not required to be used for the settlement of child support arrears, then in the Ombudsman's view it was conceivable that the current policy, or at least its administration as demonstrated in this case, could be said to unreasonably favour liable parents at the expense of the custodial parent.

Finally, in respect of the complainant's exclusion from the negotiations for the instalment arrangement, IRD referred the Ombudsman to a number of pieces of legislation, namely:

- section 128 of the Child Support Act which deems child support payable as a debt due to the Crown;
- section 179 of the Child Support Act which removes the custodian's right to take any legal action in relation to any financial support payable by the liable parent; and
- the secrecy provisions in section 81 of the Tax Administration Act 1994 which prevent IRD from disclosing to the custodian the financial position of the liable parent and the reasons for entering into an instalment arrangement.

Despite the complainant's exclusion in this case, IRD confirmed that whenever instalment arrangements for the collection of arrears are being negotiated, it always considers recovery of debt at the maximum rate and in the timeliest manner possible.

The Ombudsman accepted that the child support officer concerned had acted in accordance with IRD's current policy for negotiating instalment arrangements and the complaint could therefore not be sustained. However, given the lack of any evidence of questioning or scrutiny of the father's full financial situation, the child support officer's readiness to agree to his proposal for the payment of arrears and her acceptance of his word that he could not make a lump sum payment, it was the Ombudsman's view that IRD's policy was itself deficient. It contained insufficient directive for the liable parent's full financial situation to be disclosed and scrutinised in each case before approval is given to an instalment arrangement. As a result, the Ombudsman considered the policy left open the possibility of staff being coerced by liable parents to accept, without question, statements about their ability to clear a debt and did not provide for adequate transparency of process, particularly in a case where the liable parent is a member of staff.

After consulting with its Child Support division, IRD responded to the Ombudsman's view by maintaining that the current policies and procedures reflect the balance that is required when dealing with both parties in a child support relationship. However, IRD agreed that there may have been some difficulty with the adequacy of the directive for the liable parent's financial situation to be fully disclosed and scrutinised before approval is given to an instalment arrangement. Full scrutiny would ensure that the custodian receives their entitlement in the most timely manner possible. As a result, the National Manager of Child Support agreed to review the relevant policies and procedures.

Further, in light of the concerns about the transparency of the decision making process, the Ombudsman was advised that the requirements for recording notes into IRD's system were to be changed to ensure that key points leading to a decision to accept an instalment arrangement would henceforth be shown.

### **Comment**

The primary focus of the Ombudsman's investigation in this case was to ascertain whether IRD's policies had been properly observed and the decisions reached were not unreasonable in the circumstances. In other words, he was primarily concerned with establishing whether IRD had rational grounds for its decision in agreeing to allow the arrears of child support to be paid by way of instalments. It was not the Ombudsman's role to substitute his opinion for that of the officer concerned. Similarly, it was not his role to scrutinise the actions of the liable parent, albeit that he may be an employee of an organisation which is within the jurisdiction of an Ombudsman. Nothing in the Ombudsman's analysis of this complaint should be construed as a judgement of the father or his actions.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*