

Allegations against Area Health Board not sustained by Ombudsman but Board initiates proceedings against TVNZ

Legislation	Ombudsmen Act 1975
Agency	Area Health Board
Ombudsman	Nadja Tollemarche
Case number(s)	A2986
Date	1992

Public allegations of misdiagnosis and ill treatment of child—effect of publicity on those involved—examination of non-broadcast material—complaints not sustained, but broadcast material unbalanced

Occasionally a complaint has a high public profile, requiring at the conclusion of an investigation a public report. Allegations of misdiagnosis and ill treatment of a young boy at the Children’s Hospital at Auckland were made in the Holmes Show, TVNZ late in 1989.

As far as the allegation of misdiagnosis was concerned, as a matter of medical expertise, that was not within the Ombudsman’s jurisdiction which is confined to matters relating to administration. The allegation of ill-treatment, on the other hand, did relate to administration of the hospital and was within jurisdiction. To assess whether there was ill treatment the Ombudsman needed to familiarise herself with the medical literature about treatment that was accepted practice for the diagnosed condition.

The complaint came to the Ombudsman’s attention in an unusual way. After the Holmes Show the Chief Executive of the Area Health Board felt it necessary to have an independent investigation and telephoned to ask about procedures for making complaints. The Ombudsman explained that although there is provision in the Ombudsmen Act for own motion investigations, in a case where a complaint is essentially one from a particular person(s) she would need to be approached by the complainant(s) before she would take up the matter.

The Ombudsman expressed readiness to be approached by the complainants but made it clear that any complaint should be lodged as quickly as possible so that evidence could be gathered

while it was fresh. Unfortunately, due to a number of factors a formal complaint was not received until some five weeks later. The Board was notified by facsimile the same day.

The complaint as made by the family and notified to Area Health Board was that the Board had acted unreasonably in treatment of their son during his stay in hospital by staff –

1. Allowing the boy's head to bang on doorways 'several times' . . .
2. Allowing him to drop on his head.
3. Making the boy sit tied in a wheelchair with insufficient support causing him to suffer pain in his neck, back and armpits, 'rope burns' to his armpits, and sore elbows from rubbing against the wheels.
4. Making him eat his meals and drink while poorly positioned in a wheelchair without assistance or support.
5. Allowing his head to fall under water during bathing, then pulling him out by the ears.
6. Having a rude and careless attitude towards him.
7. Allowing the boy to sit slumped in an armchair causing him to nearly fall to the floor.

Of concern was the enormous amount of publicity the matter had received through the media, and its effect on the various people involved including parents of potential future patients. It was therefore necessary for the Ombudsman to check minutely the evidence obtained. This was made more difficult due to the delay outlined above, and to counteract that, most weight was placed on earlier statements, in particular on contemporaneous medical and nursing notes made before any complaint arose.

Persons interviewed included the patient's parents, the patient, his grandfather, senior medical personnel, eight nurses, an occupational therapist, ward orderly, Mr Holmes and a reporter.

Documentation studied included all relevant ward files, written statements by staff, transcript of television programmes, and submissions and reports from the Area Health Board. Medical information on the disorder diagnosed in this case, and treatment was examined. It appeared a consistent treatment of conversation syndrome was to initiate a planned programme of physical rehabilitation to help the patient give up the 'sick role' and alter the parental perception of their child as a 'chronic invalid' to one of potential health and normal development.

The delays in obtaining some of the evidence made it advisable to check the allegations made against the earliest records complaints that were on the taped interviews held by TVNZ. Accordingly, under the provisions of section 19(1) of the *Ombudsmen Act*, the Ombudsman asked TVNZ for access to the unedited tape and also asked to interview the presenter and reporter of the programme. The Ombudsman made it clear that this was not an investigation of a complaint against TVNZ, but that the evidence was required for the purpose of my investigation of the complaint against the Area Health Board. However, in writing her report the Ombudsman came to the conclusion that comment had to be made on the selection,

failure to check and emphasis of the allegations broadcast nationwide. Therefore, in accordance with section 18(3) of the Ombudsmen Act, the Ombudsman provided TVNZ with a draft of the report she proposed to make for comment and carefully considered the views that were expressed in response.

After exhaustive analysis of contemporary records, before any complaints had been made, initial complaints to TVNZ, written and verbal statements, and responses to initial findings, The Ombudsman came to the conclusion that none of the complaints could be sustained.

Her final report included the comment that it was the view of the Board staff which she accepted, that the television programmes amounted to a 'trial by media', to which nursing staff had had no opportunity to reply.

The extracts from the transcript demonstrated a degree of very emotive and inaccurate reporting. An example was the statement by the report that *'every morning for a week (suggesting a minimum of seven times), the boy ... was dumped on to the floor.'* The Ombudsman's finding was that there were three reports relating to two transfers when the patient was lowered to the floor, which might have been interpreted by his mother, as the patient being 'dropped'. Later the boy recalled one incident. In addition he was in the ward for only four mornings. Compared with the picture conjured up by the Holmes Show description it was obvious that such unsubstantiated, highly damaging reporting was unacceptable.

The Board had been contacted by TVNZ between 3.00 and 3.30 p.m. on the day of screening to allow it a 'right of reply', i.e just hours prior to presenting the material to the public when medical and nursing staff were not available. The Ombudsman commented that a reasonable time should have been allowed for the representatives of the Area Health Board to view and comment on the material. The screened presentation of this case could only be described as, in the Ombudsman's view, totally unbalanced.

Subsequent to the Ombudsman's report the Area Health Board initiated legal proceedings against TVNZ. Some months later an out-of-court settlement was reached.

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