

Crown Health Enterprise reminded to exercise discretionary powers reasonably

Legislation	Ombudsmen Act 1975
Agency	Crown Health Enterprise
Ombudsman	Sir Brian Elwood
Case number(s)	C2565
Date	1993

Unreasonable decision to charge two fees where patient in hospital for period falling into two financial years

A complaint was made that it was unreasonable for a Crown Health Enterprise (CHE) to levy two fees on a patient hospitalised for a period falling over two financial years. *The Social Security (Hospital Inpatient Treatment) Fees Regulations 1991* provided for a charge to be levied for hospital inpatient treatment subject to an annual charge limit. For the purposes of the regulations the term ‘year’ was defined as a period of 12 months commencing on the first day of February. Accordingly, where someone was in hospital in January and February, the law provided that a CHE could levy a charge in respect of each financial year.

However, the regulations appeared to provide CHEs with a discretion to recover ‘*such amount as it thinks fit, being an amount not exceeding the relevant amount specified...*’. In this case, it was put to the CHE that it should consider reducing the amount it had charged the complainant, and it agreed to do so.

Comment

Although charges for inpatient treatment have been abolished, this case note is included because it illustrates the need for public authorities to be aware of and to exercise discretionary powers available to them in a reasonable manner having regard to the particular circumstances of each case. The appointment of the Health and Disability Commissioner has not removed the Ombudsmen’s jurisdiction to investigate complaints of this nature.

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.