

Department of Corrections should explain reasons for declining application to be excused from PD reporting

Legislation	Ombudsmen Act 1975, Criminal Justice Act 1985
Ombudsman	Sir Brian Elwood
Case number(s)	W40883
Date	1999

Refusal of application to be excused from reporting for periodic detention—incomplete explanation given at the time—reasons and apology provided—Criminal Justice Act 1985, s 41(3)

The complainant, who was serving a sentence of periodic detention, was dissatisfied with the decision of the Department of Corrections to decline his application to be excused from reporting for periodic detention under s 41 of the Criminal Justice Act 1985. Subsection (3) of the section provides that the Warden may excuse an offender from reporting for any period or periods not exceeding in the aggregate 1 week on completion of each 3-month period of the sentence.

At the time, the Department explained its decision to the complainant in terms that he was still subject to an extra hour of ‘make-up’ time (which had been granted to enable him to attend a university examination), and that his application under section 41(3) would be considered on completion of such ‘make-up’ time. The Department had, however, earlier advised the complainant that his eligibility to be excused would not be affected by the requirement that he should ‘make up’ time.

In reporting on the complaint, the Department stated that the full reasons for the decision had not been given to the complainant at the time. It advised that, as well as basing its decision on the fact that the complainant was subject to ‘make-up’ time, it had also taken into account that the complainant had previously been excused attendance on presenting a medical certificate. Thus, the explanation which the complainant was given at the time was incomplete,

in that he was not told that the decision was also based on the fact that he had already been excused attendance because of illness.

Insofar as the Department had, at an earlier stage, advised the complainant that his eligibility to be excused would not be affected by the requirement that he should 'make up' time, the explanation that was given to him, at the time, for declining his application seemed unjustifiable, and hence unreasonable.

The Department accepted that the reasons for declining the application should have been explained to the complainant more fully at the time, and, by way of remedy, agreed to provide him with an apology for the manner in which his application was handled, as well as an explanation for the decision to decline the application. The investigation was concluded on this basis.

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