

## Department of Labour failed to provide adequate support to training provider

<b>Legislation</b>	Ombudsmen Act 1975
<b>Ombudsman</b>	John Robertson
<b>Case number(s)</b>	W24642
<b>Date</b>	1992

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*REAC/Department of Labour-unfair treatment of training provider—lack of just and fair procedures—accurate recording of information—right to a fair hearing*

The complainant was a training provider who had conducted one of the first ACCESS training courses in her region. She had experienced difficulties in dealing with local departmental officials, who were providing administrative support to the REAC. A number of complaints, had been received from her trainees about her programme and a review conducted at the midpoint of the course indicated that problems identified were of such a nature as to encourage the REAC to consider terminating the course or requiring a significant reduction in the number of trainees and other administrative changes. After a considerable discussion the programme ran its course. However, subsequent proposals from this training provider had been declined and eventually she had been deregistered as a training provider. The complainant was convinced that her training programme was of a high standard and produced good results and that the REAC's decisions had been taken as a result of incorrect and biased advice from departmental officials, on which she had had no opportunity to comment. The complainant was also distressed by the gossip that had been generated as a result of these difficulties, which had created problems for her in dealing with other government agencies and members of the public.

In view of the nature of the complaint, which had generated considerable acrimony, and the number of people involved, the Ombudsman arranged for interviews to be conducted with the complainant, members of the REAC and departmental staff. The department maintained that its officers had adopted a neutral role as a servicing agent for the REAC and had carried out this

function satisfactorily. For its part, the REAC considered that it had acted in good faith, had taken its decisions on the basis of accurate information from the department, which confirmed advice from other sources, and had acted in the best interests of trainees. It was claimed by both agencies that the complainant was an extraordinarily difficult person to deal with but that every effort had been made to act fairly towards her.

After a lengthy investigation the Ombudsman came to the view that the REAC had failed to observe adequate and fair procedures in dealing with its concerns about the programme in question and with trainee complaints. Although REAC members may have reached conclusions that were on the whole, not unreasonable, in the Ombudsman's view the process used had been deficient and appeared to be unfair. In particular, allegations were not put to the complainant in writing nor in specific form so as to enable her to respond to them. The REAC's communications were characterised by a lack of clarity and specificity and did not formally acknowledge the training provider's difficulties in dealing with the department, which were not solely of her making.

The Ombudsman found that in fact a personality clash had developed between the training provider and a key officer of the department and that although some attempt had been made to work around this problem, a resolution had not been achieved. Furthermore, the Ombudsman did not accept that the department was a neutral servicing agent, but considered that its officers, in carrying out some of the executive functions of the REAC, were required to give advice and express opinions. There was evidence of a less than objective approach on the part of some officers and overall, the department's failure to take responsibility for the information collected and used by its officers in my view did not measure up to sound administrative practice. The record of events contained on the training provider's file was incomplete, the complainant not having been given the opportunity to comment on it, and much of what was recorded was pejorative.

The REAC and the department accepted the Ombudsman's conclusions and undertook a number of remedial actions; a letter of apology was sent to the complainant and information clarifying her position was sent to other government agencies. The department suggested that an annotation be placed on the complainant's file, noting that the record it contained was incomplete since she had not been given an opportunity to comment on the allegations at the time they were made. The department also agreed to circulate a note to all ACCESS managers reminding them of their obligations regarding the recording of information about individuals; that the information should be fair and recorded according to sound administrative practice; and that control checks should exist to ensure that individuals had the opportunity to respond to unfavourable comments which might affect future decisions concerning them. On this basis no further investigation was warranted, and the file was closed.

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