



Review and Appeal Rights available for ACC claimants

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| Legislation | Ombudsmen Act 1975, Accident Rehabilitation and Compensation Insurance Act 1992 |
| Agency | Accident Compensation Corporation |
| Ombudsman | Sir Brian Elwood |
| Case number(s) | C3755 |
| Date | 1998 |

Failure to compensate for medical error—review and appeal rights available therefore outside jurisdiction—ACC Complaints Investigator available to consider peripheral issues

Although statutory review and appeal rights are available to people who are dissatisfied with the decisions of the Accident Rehabilitation and Compensation Insurance Corporation (ACC) in respect of entitlements, some people are either unaware of them or reluctant to have anything further to do with the Corporation.

In this case, the complainant was not satisfied with the level of compensation received from the Corporation for personal injury suffered as a result of a medical error. Although compensated for her medical costs, the complainant considered she was entitled to compensation for pain and suffering.

It would have been open to the complainant to have had the decision on her claim reviewed and, if she was still dissatisfied, to have taken the matter to the Accident Compensation Appeal Authority. The existence of those review and appeal rights effectively preclude an Ombudsman from investigating such decisions. While the Ombudsmen Act 1975 authorises an Ombudsman to investigate complaints about administrative acts, omissions, decisions or recommendations of central and local government departments and organisations, it provides a discretion to decline to investigate such a complaint if there is an adequate alternative remedy available. Furthermore, it precludes an Ombudsman from investigating a complaint where there is a right of appeal available to a court or tribunal on the merits of the case, except where the Ombudsman considers there are special circumstances and it would be unreasonable to expect

the complainant to exercise that right of appeal. In this case no such circumstances were discernible and the complainant was advised that the complaint was outside the Ombudsmen's jurisdiction.

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.