

## Unreasonable actions throughout dealings with custodial caregiver

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| <b>Legislation</b>    | Ombudsmen Act 1975                      |
| <b>Agency</b>         | Ministry for Children – Oranga Tamariki |
| <b>Ombudsman</b>      | Peter Boshier                           |
| <b>Case number(s)</b> | 511281                                  |
| <b>Date</b>           | April 2021                              |

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*Use of incorrect, unverified information—failure to perform due diligence before removing mokopuna from caregiver —inadequate review of case, and inadequate response to review—failure to work with complainant in a way that met their needs as a Māori person*

### Summary

The complainant, the custodial caregiver of their mokopuna, complained to the Chief Ombudsman about Oranga Tamariki—Ministry for Children, formerly Child, Youth and Family (the Ministry) . The complaint concerned the Ministry’s removal of te tamaiti from their care, and the Ministry’s actions after reviewing the case.

The Ombudsman investigated the complainant’s concerns, and also investigated whether the Ministry had failed to work with them in a manner consistent with their values and needs as a Māori person.

The Ombudsman found the Ministry had acted unreasonably throughout its dealings with the complainant.

The Ministry’s unreasonable actions included:

- using incorrect and unverified information about the complainant;
- failing to perform due diligence before removing their mokopuna;
- the Ministry’s review of the case failing to cover the wide-ranging issues the complainant raised; and
- the Ministry failing to implement the review’s recommendations fairly.

The Ombudsman's recommendations included that the Ministry make an adequate apology to the complainant, pay for additional counselling for them, and improve its guidance for staff on working in a trauma-informed manner. The Ministry accepted all recommendations.

## Background

The complainant had custody of their mokopuna and was te tamaiti's full-time primary caregiver.

Following a visit, the Ministry uplifted the complainant's mokopuna and te tamaiti was placed in the full-time care of another relative.

The complainant was allowed only supervised access with their mokopuna.

On the complainant's request, the case was reviewed by the Ministry's Chief Executive's Panel. The complainant felt the Panel did not address all their concerns, including a request for compensation, and that an apology received was inadequate. They complained to the Ombudsman.

## Investigation

### Lack of evidence or verification

The Ombudsman found a lack of evidence for concerns for te tamaiti's safety. It appeared as if the decision to take steps to remove te tamaiti was based on social work for other tamariki residing in the home, and a series of unverified allegations about the complainant.

There was no record of a conversation with the complainant to discuss the Ministry's concerns, and no record of contact with te tamaiti's school or the local iwi service about the claims made in the applications.

### Lack of contact with the complainant

A social worker noted that there had been a plan to call the complainant after the uplift but this was not done and the complainant did not contact the Ministry either. It appears the Ministry used this as a rationale to make no further attempt to contact the complainant. This was then recorded as a lack of engagement with social workers.

However, the only record of engagement with the complainant showed the complainant, a whānau member, and a social worker from the local iwi service sought a meeting with Ministry staff.

### Incorrect claims about iwi services

The Ministry stated that local iwi services refused to work with the complainant. However, the Ombudsman learned that, as set out above, records showed a social worker from the local iwi service and the complainant together sought a meeting with Ministry staff.

Evidence of this meeting is included in Ministry records, albeit backdated by four months. The statement that iwi services were unwilling to work with the complainant was simply not true.

## Poor record-keeping

The Ombudsman found poor record-keeping and backdating of case notes was unreasonable. It was unreasonable for damaging and unverified allegations to have been repeated throughout the file, to have been relied on in preparing information for court proceedings, and to have never been raised with the complainant. It appeared simple steps could have been explored to discuss and mitigate the Ministry's concerns.

## Chief Executive's Advisory Panel

The Panel upheld a number of issues of concern that the complainant had raised about the removal of te tamaiti. However, the complainant was not satisfied with the process or outcome of the Panel's review of the case, and believed it did not fully address all of their complaints. The Panel's focus was on the removal of te tamaiti, and the final report stated that it did not have scope to look at the complaints about ongoing social work for te tamaiti.

Considering the Panel was the final point of complaint-handling within the Ministry, the Ombudsman would expect it to have looked at the complaints in their entirety, rather than focus solely on the removal.

It is understandable that the Panel could not assess a person's entire history with the Ministry. However, the Ombudsman considered there was a missed opportunity to resolve and address the wider and continuing concerns about the social work for te tamaiti.

The complainant wrote to the Panel after its review, outlining the issues they felt were not resolved, and noting they felt only two of seven concerns raised were covered. They received no response. The Ombudsman found this lack of response was unreasonable.

In response to questions about the complainant's request for compensation, the Ministry stated the complainant was *'unable to demonstrate the need for compensation'*. However, there was no record that compensation was ever explored or discussed with the complainant, and it was not addressed in the Panel's report. The Ombudsman's opinion was that the lack of communication around compensation was also unreasonable.

## Ministry's implementation of the Panel's recommendations

The final recommendations of the Panel included:

- Counselling be offered to the complainant and their mokopuna, paid for by the Ministry.
- The Ministry write to the complainant and invite them to identify and correct the incorrect information held about them. The Panel did not have access to all Ministry notes, so did not know the detail of all the incorrect information; and
- The complainant receive a letter of apology for the Ministry's failure to follow best practice.

## Apology

The Chief Executive of the Ministry wrote to the complainant after the Panel review:

*I apologise for the distress caused by Child, Youth and Family's<sup>1</sup> failure to follow best practice. This is directly related to complaint management and communications with Child, Youth and Family. I sincerely hope that the recommendations in the Panel's report will assist in resolving your complaint and strengthen the communication that you have with your whānau.*

A regional manager then wrote to the complainant:

*I accept that the Chief Executives Panel has found that your experience with Child, Youth and Family was unsatisfactory for you. I understand that there were opportunities available to have provided you with more information regarding the decision making by Child Youth and Family and that the complaints process could have done more to clarify your concerns. Please accept my sincere apology that your experience was not an example of best practice.*

The Ombudsman considered these apologies were inadequate, given the complainant's experience with the Ministry. The wording of 'failure to follow best practice' did not fully address the issues the Panel identified, or the harm the complainant felt as a result of the Ministry's involvement.

The Ombudsman found that what the complainant and their mokopuna experienced was considerably more than a 'failure to follow best practice', and had a lasting impact on the complainant's wellbeing. The apology minimised the experiences of both the complainant and their mokopuna, and appeared to have negatively impacted the relationship between the complainant and the Ministry.

The Ombudsman suggested an appropriate apology would have:

- a. acknowledged the issues identified by the Panel and the harm experienced;
- b. set out specific steps that would be taken to rectify the situation;
- c. expressed remorse for what occurred, and the impact it had on the complainant and te tamaiti; and
- d. recognised the impact that the complainant's experience with the Ministry and the complaints process had on their mental health and wellbeing.

The Ministry accepted it needed to make a better apology to the complainant.

## Counselling

A letter from the Ministry's Chief Executive said counselling would be available for six months after the letter was dated.

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<sup>1</sup> The agency at the time was called Child, Youth and Family.

However, the complainant stated that communication about and approval of counselling took a significant amount of time. The Ministry's contact person for the counselling had been the subject of several of their complaints, and was not someone they felt comfortable with. The complainant informed the Ministry but no action was taken.

The Ombudsman considered that the complainant's concerns should have been taken into account, and another staff member made the contact person for counselling.

The complainant received 11 counselling sessions before expiry of the six-month period set out in the Chief Executive's letter. The Ministry declined to fund further sessions, despite the delay in counselling starting, and despite a diagnosis the complainant received of complex post-traumatic stress disorder due to their experiences. The Ministry declined to view a letter from a medical professional that recommended the complainant continue to receive counselling to work through the trauma they had experienced.

The Ombudsman formed the opinion that the length of time it took to set up counselling, the discontinuation of counselling, and that the contact person was not changed was unreasonable.

### **Correction of Ministry records**

One of the Panel's recommendations was that the complainant be given the chance to identify and correct the information held by the Ministry. While they were given the chance to do this, they advised the Ministry seemed unwilling or unable to continue working with them to correct the information. They were instead asked to go through the paper file themselves and attach Post-it notes to the incorrect information.

The complainant indicated this was an issue as it was overwhelming and difficult due to the amount of information and the trauma it triggered when they went through the paperwork. There was no evidence the Ministry worked with them to correct the record, in a way that reflected their needs.

The Ombudsman was disappointed this issue had not been dealt with by the Ministry in a way that was responsive to the complainant's mental health needs. He noted that he expected the Ministry to work with all complainants in a trauma-informed way, without assuming that they were able to review a large amount of potentially traumatic and triggering information on their own.

### **Treatment of complainant and transition arrangements**

The Ombudsman also considered there was a discrepancy in the way the Ministry had treated the complainant and other parties involved with te tamaiti. There were also difficulties around the transition of te tamaiti and subsequent access arrangements.

### **Cultural consideration of complaint-handling**

The complainant had requested a hui kanohi ki te kanohi with those involved at a site level to discuss what had occurred. This was raised with the Ministry on two occasions as a means of

resolving this complaint. The Ministry would not participate, and queried the usefulness of such an approach. When the complainant raised that an in person meeting would be their preference, they received this response:

*'You received a letter of apology from the Chief Executive regarding the issues you raised about the failure of staff to follow best practice. As this has already been acknowledged and addressed I will not involve any remaining staff in a meeting with you'.*

It was explained in the response to the Ombudsman's provisional opinion that this was due to key staff no longer working for the Ministry. However, it could have been an important step in resolving the complaint and the Ombudsman found it was unreasonable that Ministry staff were unwilling to meet the complainant.

When asked what cultural considerations were undertaken when working with the complainant, the response received stated it was an 'ongoing issue' for the complainant. The Ombudsman emphasised that it was not an 'ongoing issue' for the complainant, but an issue for the Ministry to address.

## Outcome

It was the Ombudsman's opinion that the Ministry acted unreasonably, in:

- a. a lack of due diligence in the steps it took to remove te tamaiti including reliance on unproven information and reference to incorrect information;
- b. the lack of record-keeping and back-dated recording of meetings and conversations;
- c. failure of the Panel to respond to various concerns that had been raised and the request for compensation;
- d. the adequacy of the apologies made to the complainant;
- e. handling of the Panel's recommendation of counselling;
- f. failure to support the complainant to correct their records in a trauma-informed manner;
- g. an apparent discrepancy in treatment of different parties, and failure to explain differences in approach to the complainant;
- h. the transition of te tamaiti and access arrangements after this; and
- i. failure to address complaints in a culturally appropriate manner.

## Recommendations

The Ombudsman recommended:

- a. The Ministry arrange and fund further counselling sessions for the complainant, taking into consideration the professional judgement of their counsellor for the length of these sessions;
- b. The Ministry reconsider the request for compensation, noting that there appeared to be a range of practice failures throughout this case;
- c. A copy of the Ombudsman's final opinion is placed on the complainant's file, and more time provided for them to complete their correction letter;
- d. The Ministry develop guidance for staff around working with individuals who are correcting errors in their records, in a trauma-informed manner. This need not be lengthy or exhaustive, but should prompt consideration of the potential trauma in reviewing records, and examples of options that could best support the individual. This should be provided to the Ombudsman for review; and
- e. An appropriate apology is made to the complainant, provided to the Ombudsman for advance review.

These recommendations were accepted by the Ministry.

*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.*