

Unfair treatment by public officials – options for redress (Part 1)

In this and the following issue of *The Legal Lounge*, I will outline some of the legal and non-legal options available if you are generally unhappy with how you have been treated by public officials or organisations, with particular reference to the Civil Aviation Authority. In this issue, I focus on the CAA's own complaints process, and the right of recourse to the Office of the Ombudsmen.

Your right to information – Privacy Act 1993 and Official Information Act 1982

All individuals have the right to view or obtain copies of any personal information held about them by a public entity such as the CAA. If you consider that any information held about you is incorrect, you may request that it be corrected, or that your objection to the accuracy of the information be noted and kept with that document or file. Any decision to refuse to supply (or correct) personal information may be reviewed by the Office of the Privacy Commissioner.

Individuals and entities in New Zealand may also request any other information that is held by a wide range of public officials and entities, including the CAA, under the Official Information Act. Statutory grounds exist to withhold or refuse to supply all or part of an information request. It is not within the scope of this article to provide a detailed discussion of the grounds for a public entity refusing to supply any information. However, it should be noted that any decision to withhold or refuse to supply information under this Act may be reviewed by the Office of the Ombudsmen.

There are also a number of different forums to pursue substantive issues of complaint against public officials or organisations.

CAA Service Charter Complaints

The CAA, the Director and all of their employees or agents have a statutory obligation to adhere to the provisions of the published CAA Service Charter. The Charter states that the CAA and its personnel will, in carrying out their statutory functions:

- Treat everyone with courtesy and respect;
- Provide timely, accurate and useful responses to all inquiries;
- Act in a helpful, co-operative and professional manner

In addition, the CAA will:

- Acknowledge all written inquiries within 10 working days; and
- If a full response cannot be provided within 10 days, provide progress reports until the matter is finally addressed

If you feel that you have not received the standard of service set out in the Charter, you can complain to the Director. The complaint is supposed to be acknowledged within five working days and will then be dealt with "in accordance with CAA procedures". Progress reports are to be provided on a monthly basis where matters proceed for a length of time. A final response will then be provided to the complainant.

The Charter states that remedies could include an apology; provision of accurate and complete information, where that would remedy the original complaint; or corrective measures with respect to CAA procedures to prevent the situation from recurring.

If a complainant remains unsatisfied with the outcome of that process, he or she may request that the Director appoint an independent person to consider the complaint. Both parties will have an opportunity to make submissions to the independent person, who shall then consider the submissions and make a recommendation regarding the complaint. The complainant shall then be notified of the recommendation and any action taken as a result.

To my knowledge, few formal Service Charter complaints have been raised in recent years, and even less if any have been subject to an independent review. This may be because many issues are able to be resolved informally with the relevant CAA personnel before escalating to a formal complaint; or because other external avenues of complaint exist and are seen as the preferred option. In my view, the Charter also contains some flaws and lacks sufficient information as to the process followed. For example, no information is given as to who investigates the complaint, or whether this person is independent of the issues or CAA personnel giving rise to the source of the complaint. It is also unclear who makes the final determination on the complaint and any actions to be taken (although implicitly it appears to be the Director). In addition, if a complainant is not satisfied with the outcome of that process, they must apply to the Director to appoint an independent person to review it. There is no detail on how the Director will assess whether or not to agree to appoint an independent person, or who to appoint. In my view, given the Director's likely role in assessing or determining the outcome of a Service Charter complaint in the first instance, this decision should not be made by the Director. A request to appoint an independent person should be made to and determined by the Chairman or Board of the Authority. There should also be an ability in some circumstances, to request that the Authority appoint an independent person to assist with investigating the complaint in the first instance. This would particularly be appropriate if the complaint raises issues that have prima facie validity about the conduct of the Director or other Senior Management in dealing with the matter. Suffice to say that I consider that improvements could be made to enhance the transparency and effectiveness of the Service Charter as an avenue of complaint.

That aside, participants should not overlook a Service Charter complaint as an avenue of redress. If you are not satisfied with the service or treatment you have received from someone in the CAA, this may well provide an appropriate and efficient mechanism to resolve the issue. The Charter is not exhaustive but rather expressive of the standard of service that participants should expect. The type of situation that might lend itself well to a Charter complaint could be, for example, a complaint that the certification process for an operator was unduly lengthy and protracted and the subject of poor service or communications. This might enable a relatively efficient internal review of processes to establish whether immediate improvements could be made, that might not be as efficiently resolved by an external complaints body, or which an external complaints body might in its discretion decide not to investigate. Another example could be if participants experience particular and repeated difficulties in dealing with a certain staff member. A Service Charter complaint provides a direct and comparatively low key avenue to address concerns of this nature. There is also nothing stopping a person who has gone through the Service Charter complaint process from then raising their complaint with an external body if they remain unsatisfied with the outcome.

Complaints to the Office of the Ombudsmen

Participants who are unsatisfied with the way in which they have been dealt with by the CAA may also have redress to the Office of the Ombudsmen. It should be noted that this office has no jurisdiction to investigate matters which relate to the exercise of powers of a public decision maker for which there is a specific right of appeal. Thus a decision to revoke an aviation document or declining to issue a medical certificate is not able to be reviewed by an Ombudsman. However, concerns about the process or way in which matters were handled, that do not directly relate to the outcome or substantive decision made, may be within their jurisdiction.

Once a complaint is received and assigned to an Ombudsman, it is the usual practice of the Office to invite the public official or organisation that is the subject of the complaint to provide an initial comment or response. After considering the complaint and any initial comments, an Ombudsman will then decide whether or not to investigate the matter. The Ombudsman may decline to investigate if it is not apparent that the matter complained of affects any person in a personal capacity, or the complainant has an insufficient personal interest in the subject-matter of complaint. An Ombudsman may also decide not to investigate a complaint if he or she considers that the public organisation has already addressed the issue and provided an adequate remedy, such that an independent investigation is not warranted. There is also discretion not to investigate a complaint where the subject matter of the complaint has been known to a complainant for more than 12 months. Thus, failure to pursue a complaint at any level within the first 12 months may be detrimental to your case. However, if you have first attempted to deal with the matter directly with the organisation concerned, and have then elevated the matter to the Office of the Ombudsmen on the basis that you were not satisfied with the organisation's response, this should not on its own act as a bar to the matter being investigated after 12 months.

If an investigation is commenced by an Ombudsman, the Chief Executive of the public organisation will be notified. The complainant has no legal obligation to put together the case against the public body, and the Ombudsman has broad powers to obtain any information as he or she sees fit. In addition, the Ombudsman may examine any persons on oath; enter and inspect premises; and refer substantial evidence of any significant breach of duty or misconduct by an officer or employee to the appropriate authority. It is also an offence to obstruct or hinder or resist an Ombudsman in the course of his or her investigation, without reasonable excuse.

Following an investigation, the Ombudsman will produce a report on the complaint and the outcome of the investigation. If the Ombudsman proposes to make adverse findings, the organisation or officers concerned will have had an opportunity to comment on a draft report. The final report may make adverse findings that public officials or organisations have acted contrary to law; acted under a mistake of fact; acted unreasonably, unjustly or oppressively, or in an improperly discriminatory manner; or to have simply made a "wrong" decision. The Ombudsman may, as a result of such findings, recommend that a decision by a public official or organisation be reversed or cancelled; recommend changes to the organisation's systems and procedures; send a copy of the report and recommendations to the relevant Minister responsible for the organisation; and report non-compliance with its recommendations to the Prime Minister or Parliament.

The Chief Ombudsman may also require the CEO of the offending public organisation to summarise and publish the Ombudsmen's report and findings, and to make it available for inspection and copying by members of the public. In practice this would usually mean publishing the report on the organisation's website.

The Office of the Ombudsmen does not have power to award damages and a person who considered that they had suffered demonstrable loss as a result of public maladministration would need to pursue judicial remedies through the Courts. A successful complaint to the Office of the Ombudsmen could none the less lead to an acknowledgment of and apology for any previous wrong doing, and real improvements and change to an organisation's processes.

In the next edition of *The Legal Lounge*, I will discuss other legal and non-legal options, including possible recourse to the Health and Disability Commissioner (on medical matters), the Human Rights Commission and the Human Rights Review Tribunal.

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