
Crown Health Enterprise

Report on Opinion - Case 98HDC14890

Complaint The Commissioner received a complaint that a Crown Health Enterprise had not responded appropriately to the complainant's letter of complaint dated 12 April 1998.

Investigation The complaint was received on 20 May 1998 and an investigation was commenced. Information was obtained from:

The Complainant, son of the late Consumer
The Risk Manager, Crown Health Enterprise

Outcome of Investigation The Complainant discovered that his late father's x-ray report, which contained important diagnostic information, had been misplaced and did not come to his general practitioner's attention until nearly two years subsequent to the x-ray. The x-ray was taken in mid-December 1995 and was found in late September 1997 in a Crown Health Enterprise folder containing more recent x-rays of the complainant. Because the failure to consider treatment for the complainant's father occurred prior to 1 July 1996, the Commissioner could not investigate this particular complaint. Instead the Commissioner referred the complainant to the Medical Council and Medical Radiation Technologists' Board.

On 24 November 1997 the Commissioner wrote to the complainant and the Crown Health Enterprise reminding them of Right 10 of the Code of Health and Disability Services Consumers' Rights. The complainant wrote a complaint letter to the Chief Executive Officer of the Crown Health Enterprise on 12 April 1998. The complainant sought a full inquiry into the matter of the misplaced x-ray, a detailed explanation of what went wrong, a written apology from those concerned, written assurance that those responsible had been censured and that improved procedures would be implemented, and some form of compensation to be provided.

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**Outcome of
Investigation,
*continued***

When the complainant had not received a response by 17 May 1998, he complained to the Commissioner about the lack of a response from the Crown Health Enterprise. However, a response from the Crown Health Enterprise had been sent to the complainant by letter dated 14 May, and appears to have crossed in the mail with his complaint to the Commissioner.

In response to the Commissioner's provisional opinion the Crown Health Enterprise faxed a letter to the Commissioner dated 17 April 1998 which had just been discovered as it had been misfiled. The letter acknowledged the complaint of 12 April 1998 and also gave details of advocacy services and the Health and Disability Commissioner's Office. However the complainant stated he never received this letter and it was this lack of a response that prompted him to make a complaint about the Crown Health Enterprise.

On 26 June 1998, the Commissioner advised the Crown Health Enterprise of an investigation into their lack of response to the complaint. The Commissioner received no response from the Crown Health Enterprise and telephoned the Risk Manager on 4 November 1998. He stated that the Crown Health Enterprise had no knowledge of the letter from the Commissioner advising of the investigation and his further inquiries showed there was no record of receiving this letter.

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Outcome of Investigation, continued

In response to the investigation, the Risk Manager stated he kept the complainant informed regularly before sending out the Crown Health Enterprise's response:

It took me some time to complete these enquiries, and I remember contacting [the complainant] by telephone on several occasions to keep him advised of my progress, and the likely delays ...[but] on most occasions [the complainant] was not at the number he had given us ... I am unable to confirm the dates or frequency of such calls.

The complainant in response stated, "while I did receive one phone call from [the Risk Manager] on 17/11/98 I am unable to recall any earlier phone calls from him."

The complainant stated he was not given any information about the Health and Disability Commissioner or advocacy services when he made his complaint to the Crown Health Enterprise. Copies of correspondence between the Crown Health Enterprise and the complainant were forwarded to the Commissioner by the complainant.

On 14 May 1998, the Risk Manager responded in detail to the complainant's concerns. Included in the letter was an apology to the complainant. The letter also referred to a meeting which should have been arranged for the complainant's family with the Radiology Team. The Risk Manager stated this meeting did not occur because "there was confusion between the Support Services Manager and myself as to who would arrange and attend such a meeting."

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**Outcome of
Investigation,
*continued***

The complainant then wrote back to the Risk Manager on 10 June 1998 making specific comments on the response and asked for clarification on five points. The Risk Manager responded in writing on 25 June 1998 to the five points.

The Risk Manager reported that when the complainant did not respond to this latest letter, he assumed the matter was resolved to the complainant's satisfaction. On hearing from the Commissioner's office that this was not the case, on 19 November 1998 the Risk Manager wrote directly to the complainant enclosing a copy of his response to the Commissioner and an apology to the complainant's mother.

The complainant stated he made a request to see a report of the investigation that had occurred as a result of the complaint. In response, the Risk Manager concluded his letter of 19 November 1998 with the statement:

After reviewing the file, I see that we have shared with you all the findings relating to the misdirection of the report and the appropriateness of your father's treatment. These findings have already been extensively covered in all our correspondence to you to date. On the other hand, the advice relating to ACC coverage, insurance issues, etc are mainly for our internal use only, and are probably not relevant or appropriate for your purposes.

The complainant made a request under the Official Information Act on 4 December 1998 for all information relating to his complaint and the findings of the subsequent investigation undertaken by the Hospital.

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**Code of
Health and
Disability
Services
Consumers'
Rights**

*RIGHT 10
Right to Complain*

- 3) *Every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints.*
- 4) *Every provider must inform a consumer about progress on the consumer's complaint at intervals of not more than 1 month...*
- 6) *Every provider, unless an employee of a provider, must have a complaints procedure that ensures that -*
 - a) *The complaint is acknowledged in writing within 5 working days of receipt, unless it has been resolved to the satisfaction of the consumer within that period; and*
 - b) *The consumer is informed of any relevant internal and external complaints procedures, including the availability of -*
 - i. *Independent advocates provided under the Health and Disability Commissioner Act 1994; and*
 - ii. *The Health and Disability Commissioner; and*
 - c) *The consumer's complaint and the actions of the provider regarding that complaint are documented; and*
 - d) *The consumer receives all information held by the provider that is or may be relevant to the complaint.*
- 7) *Within 10 working days of giving written acknowledgement of a complaint, the provider must, -*
 - a) *Decide whether the provider -*
 - i. *Accepts that the complaint is justified; or*
 - ii. *Does not accept that the complaint is justified; or*
 - b) *If it decides that more time is needed to investigate the complaint, -*
 - i. *Determine how much additional time is needed; and*
 - ii. *If that additional time is more than 20 working days, inform the consumer of that determination and of the reasons for it.*
- 8) *As soon as practicable after a provider decides whether or not it accepts that a complaint is justified, the provider must inform the consumer of -*
 - i. *The reasons for the decision; and*
 - ii. *Any actions the provider proposes to take; and*
 - iii. *Any appeal procedure the provider has in place.*

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**Opinion:
Breach**

In my opinion the Crown Health Enterprise has breached Rights 10(3), 10(6)(a), 10(6)(b), 10(6)(c), 10(6)(d), 10(7)(a), and 10(7)(b) of the Code of Health and Disability Services Consumers' Rights, but has not breached Rights 10(4) and 10(8) of the Code of Rights.

Right 10(3)

In my opinion, the Crown Health Enterprise breached Right 10(3) of the Code.

The Crown Health Enterprise did not facilitate the efficient resolution of the complainant's complaint by its failure to follow through its offer to facilitate a meeting with the consumer's family and the Radiology Team in order to address the family's concerns. There was the confusion over who was to facilitate the meeting, and because its organisation was never appropriately delegated the failure to arrange the meeting was not detected.

Right 10(6)(a)

In my opinion, the Crown Health Enterprise breached Right 10(6)(a) of the Code.

The Crown Health Enterprise's obligation was to acknowledge the complaint in writing within 5 working days of receipt, unless it had been resolved to the satisfaction of the complainant within that period. The Crown Health Enterprise did not provide evidence that the complainant's complaint was acknowledged in writing. It was this lack of response which prompted the complainant to make a complaint to the Commissioner.

The Crown Health Enterprise presented a copy of a letter to the Commissioner on 27 May 1999 which was held in the Chief Executive's filing system. There is no evidence that this letter was even sent and this further demonstrated the lack of a co-ordinated approach to documenting complaints.

Right 10(6)(b)

In my opinion, the Crown Health Enterprise breached Right 10(6)(b) of the Code by not informing the complainant of the advocacy services in the area, nor of the complaint procedures of the Health and Disability Commissioner.

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**Opinion:
Breach,
*continued***

Right 10(6)(c)

In my opinion, the Crown Health Enterprise breached Right 10(6)(c) of the Code by not documenting the complainant's complaint and all subsequent actions taken. The Risk Manager stated he attempted to inform the complainant of progress on the complaint by telephoning his home. However the Risk Manager was unable to provide evidence of these calls, while the complainant stated he had no knowledge of these calls, other than one made on 17 November 1998. There is insufficient evidence to determine whether or not the calls were made to the complainant.

In addition, the complainant requested a report on the investigation that the Risk Manager stated had occurred as a result of the complaint. Apart from the correspondence to the complainant himself, no other information was made available, indicating a lack of record keeping and report writing on the investigation into the complaint.

Right 10(6)(d)

In my opinion, the Crown Health Enterprise breached Right 10(6)(d) of the Code by not making all the information that was relevant to the complaint available to the complainant. While I accept that a provider may be entitled to withhold information that may be privileged such as legal advice on the complaint, I consider it unreasonable that the complainant had to seek additional information from the Crown Health Enterprise under the Official Information Act.

Right 10(7)(a) and 10(7)(b)

In my opinion, the Crown Health Enterprise breached Rights 10(7)(a) and (b) of the Code.

The Crown Health Enterprise considered the complaint was justified. However, because the Crown Health Enterprise required more than 20 working days in order to respond to the complainant, there was a need to notify the complainant that additional time would be required and this did not occur. I note, however, that a response was forthcoming shortly outside this timeframe.

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Opinion:
No Breach

Right 10(4)

In my opinion, the Crown Health Enterprise has not breached Right 10(4) of the Code.

Once the initial response from the Crown Health Enterprise was sent to the complainant, it appears to have responded within the timeframes set by the Code.

Right 10(8)

In my opinion, the Crown Health Enterprise has not breached Right 10(8) of the Code.

The Risk Manager on behalf of the Crown Health Enterprise responded in writing to the complainant's complaint. When the complainant sought further clarification, the Risk Manager responded promptly to his request. A written apology to the consumer's wife and to the complainant was submitted with an invitation to discuss the issues further if necessary. However, this suggestion for further discussion was made in the context that a prior suggested meeting had not been arranged by the Crown Health Enterprise, and this may have affected the ability of the parties to take this invitation further.

Actions

I recommend that the Crown Health Enterprise provide evidence of, and implement, a complaints procedure that fulfils the requirements of Right 10 of the Code of Health and Disability Services Consumers' Rights.

This Complaints Procedure is to include:

- A time limit for responding to complaints, including written acknowledgement of the complaint within five days
- A requirement that responses to complaints be fully documented, including telephone calls
- A requirement that relevant documentation be made available to complainants at their request
- A requirement that information about the role of the Health and Disability Commissioner and Advocacy Services be made available to all complainants
- A process whereby responses to complaints are regularly reviewed to ensure that the above criteria are met.

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Actions,
continued

In addition, the Crown Health Enterprise is to provide a written apology for their breach of Right 10 of the Code to the complainant. The apology is to be sent to the Commissioner who will forward it to the complainant. A copy of the apology will remain on the investigation file.
