Dear Ombudsman, dear staff at the Office of Ombudsmen

On 01 November 2015 I sent you a complaint stating that the Ministry of Social Development (MSD) had failed to provide a response to two requests I had on 08 July 2015 made under the Official Information Act 1982 (OIA). I can inform you that I did finally receive a response on 19 November, but as it has repeatedly occurred in earlier cases, some information that I asked for has not been provided, and some of that again without stating any reasons for it.

Hence I must follow up my earlier “delay complaint” with this further complaint letter, detailing what information MSD provided, and what the Ministry has withheld without giving any acceptable reasons for this. I do this following the advice in the response letter from MSD, to contact your Office, should I wish to have their response reviewed.

Like I mentioned above, I did on 08 July 2015 send two letters with a number of OIA requests to the Chief Executive of MSD. One letter contained only three straight forward requests for a cost component breakdown for the Jobseeker Support, Supported Living Payment and Sole Parent Support benefits. A separate letter contained 21 requests for more specified and comprehensive information. Copies of both requests were sent to your Office, but I will nevertheless attach them again to this letter, so they are readily available to you.

My first OIA request from 08 July 2015

In my first request to MSD I asked for the mentioned “breakdown” of three main benefit types, the Jobseeker Support, Supported Living Payment and Sole Parent Support benefits, referring clearly to costs for food, clothing, accommodation, transport/travel, electricity, water, phone costs, social spending and so forth. I listed my questions numbered with 1 to 3.

MSD have only provided explanations that the base benefit rates are different dependent on benefit types (e.g. whether a person is single, partnered or a sole parent), that they are not
based on a person’s previous income from employment, and that they are rather “intended to provide an adequate income to meet basic living costs”. Then MSD informed me that “there is no legislative formula used to decide the “correct” rates of benefit” and listed a few "competing objectives and issues” to take into account. I was informed of the annual inflation adjustment, but given NO reply to my actual questions, which asked, what components or parts of costs MSD considers for the listed common living cost items (e.g. food and so forth).

MSD have in my view failed to properly answer these three questions. I have been informed that MSD has at least in the past used specific cost calculations for determining how high the main benefits should be, in order to be sufficient for people to live from, and that was the information I expected. The questions I put to MSD, and the requests I made to them, should have been clear enough for MSD to provide the information that they use to determine living costs, and as far as I was advised some years ago, there were standard formula or so used (not “legislative”) to do this. I do not believe that MSD simply make up base benefit rates, without using some acceptable, available officially accepted guidance. I am familiar with separate allowances and top ups that are available for persons on benefits in certain circumstances, such as the accommodation supplement, disability allowance and temporary additional support. But those are special additions, which are not included in the main or base benefit rates, and persons need to prove they have extra needs to get these additional top ups. Hence I do expect a breakdown of the main or base benefit rates, which logically will have considerations for standard costs for a range of basic living expenses.

As MSD also administer ‘Studylink’, I wonder whether the Ministry uses similar considerations as are indicated in the following information shown on the ‘Studylink’ website: [http://www.studylink.govt.nz/tools-and-calculators/on-course-budget-calculator.html](http://www.studylink.govt.nz/tools-and-calculators/on-course-budget-calculator.html)

On that page with their ‘Cost of living calculator’ there is mention of “typical costs”, “estimates for most of the basic weekly costs”, and under ‘How we got the real world estimates’ it says under point 3: “Power, groceries, petrol, clothes, takeaways, leisure, toiletries/beauty/makeup these are the average person’s weekly spending, taken from the Housing Expenditure Survey 2007 and adjusted for inflation.”

In any case, I know very few persons dependent on social security benefits, who feel that they have an adequate income “to allow participation and belonging in society”. Main or base benefit rates barely cover all the basic living costs, most certainly not here in Auckland, and there is no active participation possible for them in social activities, when compared to what persons with say an average income are able to do. In any case I must ask you as Ombudsman to remind MSD of my actual question, and to ensure the Ministry does actually properly answer the questions put to it and provides the information that I requested.

My second OIA request from 08 July 2015

Requests/questions 1 to 4

In the first four questions of my second OIA request I asked for specified information in the form of copies of reports from named senior professionals that have acted as either external or internal advisors, and as “experts” to MSD, such as Prof. Mansel Aylward, Dr David Beaumont and also Dr David Bratt, the last person as MSD’s Principal Health Advisor (PHA). In the case of Dr Bratt I also asked for reports or correspondence exchanged between him and Prof. Aylward - or other research members - based at the ‘Centre for Psychosocial and Disability Research’ at Cardiff University in Wales. That Centre is now called ‘Centre for Psychosocial Research, Occupational and Physician Health’ (PROPH).

MSD have responded with the following comment:
“The reports and written correspondence you have requested regarding health, disability and work assessments do not exist. As such, question one to four of your request are refused under section 18(e) of the Official Information Act.”

Given the fact that we are talking about frequently quoted advisors and experts, who have without any doubt exchanged correspondence, and I presume reports, as was indicated by earlier responses by MSD to my OIA requests, I do consider this comment by MSD somewhat hard to believe. Perhaps such reports do no longer exist, because they have been destroyed, same as emails for a whole period that Dr Bratt is known to have previously deleted (including those exchanged with Prof. Aylward). That appears to be the only explanation for the provided reply to be credible.

I have read the Cabinet Paper ‘Welfare Reform Paper C: Health and Disability’ from 27 July 2012, made available by the Ministry (via the internet), and there are repeated references on how the so-called ‘Health and Disability Panel’ set up by Minister Paula Bennett and MSD “advised” the Ministry on matters relating to welfare reform. Under “Executive summary” and Paras 6, 7, 10 and 11, there are references made as to how the Panel “advised” the Ministry which would in the usual manner be done by way of a report. Under “Summary: advice from the Health and Disability Panel” and from Para 46 onwards, there are further such references made. Under Para 51 reference is made re how Panel members sought advice from Sir Mansel Aylward and Dame Carol Black, and under Para 64 there is mention of the “Panel’s recommendation”. Under Para 71 there is mention of a Panel subgroup, and APPENDIX TWO lists the members of the ‘Health and Disability Panel’, which includes Dr David Beaumont. APPENDIX THREE mentions the Work Capability Assessment (WCA) in the UK and a summary of evidence. The Work Capability Assessment was according to evidence I have based on earlier UK assessment methods that had been designed and recommended by Professor Aylward, and thus he has at least indirectly had input in the WCA.

Dr David Beaumont was according to my knowledge chairing the ‘Health and Disability Panel’ referred to in the Cabinet Paper above, and as the Panel appears to have presented reports to the Ministry, one must reasonably conclude, that Dr Beaumont was as part of that Panel authorising and signing any reports that were presented to MSD. Hence that report, like possibly others by or with the input of Dr Beaumont, should have been kept on record, given its importance. Therefore it cannot be correct that there are no reports that MSD received from Dr Beaumont, unless they have been destroyed without appropriate authority.

I also note that in a ‘Speech to medical professionals’ former Minister Paula Bennett made the following comments:

“The focus for people with disabilities and long lasting conditions will be on their barriers to work not just their health, and we’ll be hands on, early on. This was an important point made by the experts on the Health and Disability panel which I established to review our proposed welfare changes. It also echoes the UK’s assessment processes and the “Pathways to Work” initiative for vocational rehabilitation designed by Professor Sir Mansel Aylward. When I sat down with Sir Mansel earlier this year he told me that health conditions account for just 10 to 15 per cent of barriers to work for people on disability benefits. He said that many health conditions or disabilities can be well managed in work but addressing other barriers are just as important.”

“In fact renowned academic and clinician Dame Carol Black found that joblessness is likely to lead to a myriad of health problems both psychological and physical. Points echoed by Professor Sir Mansel Aylward and Australian academic Dr Debra Dunstan. Sir Mansel says that health wise, after six months of unemployment each day off work is as detrimental as smoking 200 cigarettes.”

Here is a link to a website showing a transcript of that speech:
http://www.beehive.govt.nz/speech/speech-medical-professionals
Also did the NZ Doctor magazine report on 29 February 2012 under “Four GPs advise on new benefit”, that 4 GPs had been included in the mentioned ‘Health and Disability Panel’. NZ Doctor stated that they only managed to obtain the names of the Panel members after repeated efforts under the OIA. NZ Doctor mentioned all members by name, which had in the year before been refused to be made public by the Ministry, and Dr Beaumont is also listed as a member of that Panel. Paula Bennett, who provided the names to NZ Doctor refused to release other details, “due to confidentiality of advice”.

MSD have then and up to now continued, to keep a high degree of secrecy about the Health and Disability Panel and its reports, and there is very little information found on the internet. It is beyond belief that MSD do in the OIA response to me simply deny the existence of any reports from the likes of Drs Beaumont and Aylward, while they were evidently involved in providing advice to the Ministry. Such advice will not simply and only have been provided verbally; as such expert advice tends to be presented in proper reports.

Dr David Bratt has according to his position description, which I have a copy of, also responsibilities that cover advice on policy matters, hence it must be expected that he as the Ministry’s senior advisor on health and disability matters will also have been presenting reports and exchanging them not only with Ministry staff, but likely also some external advisors. In that position description it says under ‘Purpose of the Position’: “The Principal Health Advisor will lead key staff within Work and Income to develop and document medical policy, operational guidelines and provide advice to regional staff where required”. As I already informed your Office on previous occasions, he has also cooperated closely with Professor Aylward, even producing joint presentations. He has used references to Mr Aylward’s reports, and such that Prof. Aylward co-authored with Dr Waddell, in many of his presentations, so he must have received reports from experts like Mr Aylward, in his capacity as PHA, to access and use reports by Prof. Aylward. Hence Dr Bratt must at least have been presented the mentioned reports by Dr Aylward, same as they will have exchanged much correspondence, not only limited to booking of travel and conference attendance. The recent visit by Dr Bratt to the UK, upon invitation by Prof. Aylward, will inevitably also have involved the creation and exchange of reports, but none of these have been made available by MSD.

As all these professionals were evidently involved in advising MSD and the then Minister on the supposed “health benefits of work” and experiences in the UK, as part of the government formulating and drawing up new social security policy from 2011 to 2013, reports must have existed, so the Ministry must have used a General Disposal Authority (GDA) released by the Chief Archivist under the Public Records Act 2005, to destroy the formerly existing reports.

I ask you as Ombudsman to investigate whether the asked for reports did previously exist and whether they were then later destroyed, as the response by MSD does not clarify this. In the case that the reports were destroyed, I ask for which GDA (issued by the Chief Archivist) the Ministry used as an authoritative guide to destroy said reports. In any case, it is my view that such reports should not have been allowed to be destroyed, as they will have been too important to fall under lower priority level types of records.

Requests/questions 5 and 6

I appreciate the clear answer by MSD that Dr David Beaumont and Helen Lockett (from the Wise Group and ‘Workwise’) did not declare any conflicts of interest, while they took part in the ‘Health and Disability Panel’ consultation process set up to advise the Ministry on welfare reform, where health and disability issues of persons on benefits on health ground, and reforms to “assist” such persons into jobs were discussed and considered. I know that Helen Lockett was then, and has been for years, the Senior Policy Advisor for her employer, who would have had a strong interest in gaining future contracts with MSD. I know also that Dr Beaumont did then, and has for many years, operated his own rehabilitation business “Pathways” in Otago, which has also been targeting persons with health and disability issues
dependent on benefits, to assist them into work. The fact that they did not declare any conflict of interest is significant for me to take note of, and must be of concern to the public.

Request/question 7

I take note that MSD have answered to this question as part of the group of questions / requests 5 to 8, and state the following: “Four panel members declared a potential conflict of interest which can include other forms of employment, memberships to another organisation or family relationships. However, upon review the declared conflicts were not deemed significant. The conflict of interest forms are withheld under section 9(2)(a) of the Official Information Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.”

This may be the decision that senior persons within MSD have made, but I challenge the consideration that it is not in the public interest to know about any conflicts of interest that nearly a third, if not half (including Dr Beaumont and Helen Lockett) of all the members of that Panel appear to have had. That is a significant number of members of the ‘Health and Disability Panel’ to have been allowed to act as advising members on such a high level panel, despite of having had a conflict of interest. The advice the Panel gave to MSD, to proceed with the much hailed reforms based on the supposed - but insignificantly proved - “health benefits of work”, is of great concern. It is my view that the proposed and now implemented policy reforms do ultimately put sick and disabled persons at risk, given the strong focus on “work ability” that has been adopted. The fact that even persons with terminal cancer were at least until recently advised that they have to go on the “Jobseeker Support” benefit, in order to get support during needed treatment, has raised serious questions. Also have there been other cases of misdiagnosis and wrong declarations for persons to be “fit for work”, where this was clearly not the case. Similar attempts to assess sick and disabled in the UK have led to serious harm to some affected. Hence I consider it more than reasonable to ask MSD to make available the completed conflict of interest forms, as the interest of the public to get transparency on the particular conflicts of interest is greater. There appear to have at least been some conflicts of interest, where a service provider like the Wise Group (and with that ‘Workwise’) was allowed to have their Senior Policy Advisor sit on that Panel, while having a commercial business interest in potentially gaining service contracts with the Ministry, should the agreed advice by the Panel result in using providers such as ‘Workwise’ to deliver services. As I have learned through media and earlier OIA responses (24.04.2014), ‘Workwise’ have actually been given significant contracts to “trial” the new services, for handsome fees for successfully referring unemployed with health issues into employment. Also did Dr Beaumont and his company ‘Pathways’ at least then have a potential future commercial business interest, as the reforms advised to MSD could have also provided additional clients to use his rehabilitation business.

Request/question 8

This was supposed to be covered by the combined response MSD gave to questions 5 to 8, but it has not been answered at all. I asked for any conflict of interest declaration that MSD received and holds on Principal Health Advisor Dr David Bratt and on Principal Disability Advisor Anne Hawker. No answer has been given, and this is yet again a case where MSD have omitted important, requested information from their response, without giving any explanation for it.

Hence I must ask you as Ombudsman to investigate this matter, and request an explanation for this from MSD. If there are conflict of interest declarations that were presented to MSD and are held by the Ministry, I ask that copies of these will be made available.

Request/question 9
I appreciate MSD’s response that Dr Bratt conducted a two month “study trip” to Europe (between 29 March and 31 May 2014), and that it “benefited” the Ministry in a number of ways. I also take note that Dr Bratt went to the UK and Europe upon an invitation from Prof. Aylward. I do particularly note that Dr Bratt worked with Sir Mansel Aylward from 28 April to 29 May 2014, and that Dr Bratt also met with the Chief Medical Officer to the Department of Work and Pensions, the senior health managers at Atos and the UK’s Minister of Health and Social Care, same as with Dame Carol Black.

The Ministry informs me that it “contributed” $6,915 towards attendance of Dr Bratt at the master class and conference and travel costs.

With my question from 08 July I had actually asked for reports to be made available, but none have been, apart from a very general overview of Dr Bratt’s trip and contacts in the UK and Europe. I specifically asked for copies of reports on Dr Bratt’s actual engagements there, and also on the costs and possibly received subsidies, but none of these particular reports have been provided with the Ministry’s response.

Given that Dr Bratt was in Europe for two months, and one month of that in the UK, working also with Prof. Aylward and meeting many other officials and professional experts, it is also not quite conceivable as to how all the related costs for travel, accommodation and provisions could have been covered by the relatively humble amount that MSD have quoted. I am under the impression that other costs were incurred, that had to be paid, and that were then being paid, but no information has been provided about any possible subsidies or similar that may have covered these.

Hence I must ask you as Ombudsman to clarify with MSD what reports were prepared on Dr Bratt’s travel and professional or “study” engagements in Europe, particularly in the UK, and why copies were not made available with the response provided.

Request/question 10

The response by MSD is appreciated, and I gather that no sponsorship funding was received for Dr Bratt’s attendance of the ‘2014 Integrated Master Class’ meeting(s). I am unclear though who paid for Dr Bratt’s accommodation and provisions during that attendance, and it appears that it was partly also covered by the already mentioned $6,915. If that is the case, I would appreciate the relevant share of those total expenses to be clarified.

Requests/questions 11 and 12

I appreciate the information provided by MSD on these questions and do not expect any further information on these.

Requests/questions 13 and 14

MSD has provided expenditure on Medical Appeal Boards which I appreciate. But by looking at the data provided in the attachments on ‘Medical Appeal Board Decisions’ and ‘Summary Statistics’, there are for the year ending 30 June 2013 still 95 appeals listed as “in the process of being reviewed internally or are waiting for a medical appeal hearing to be scheduled”. For the year ending 30 June 2014 a number of 55 is given for the same category and with the same explanations. This does not seem to make any sense at all, as it is unbelievable that hearings are waiting to be scheduled or being reviewed internally for more than one or even two years. It is possible they were decided the following year, but that is not clearly explained or stated.
I must ask you as Ombudsman to approach MSD and seek an explanation for this, which I ask to be provided. Surely appellants cannot still be waiting to be reviewed or to be rescheduled up to now, from those periods.

Request/question 15

I admit that by asking for ‘request for review’ details prior to Medical Appeal Board appeals I may not have asked a clear enough question, so I will not expect further information on this request and consider asking more specifically in future.

Request/question 16

I am satisfied with the information provided in the attached documentation.

Request/question 17

This question was referred to the Ministry of Health to respond to, and I received a reply from them in late August 2015.

Requests/questions 18 and 19

MSD have lumped all the questions numbering 18 to 21 in my second request together into one set of answers, being broken down for ‘Mental Health Employment Service’ and ‘Sole Parent Employment Service’, but when looking at the response received, only questions 18 and 19 have actually been responded to – and that only in part.

Like with answers given to a previous OIA request I filed with the Ministry, the information provided is not clear enough. While I can conclude that the number for those “enrolled in the trial” are simply just the ones enrolled at the end of February 2015 point of time, there is no clarity about the numbers of persons that have obtained lasting employment. It appears the figures are only taken from the number of persons that are “enrolled” at the end of February. Hence I get NO information on the total numbers of persons on such trials that have been placed into lasting employment for the whole past trial period up to that time.

MSD did in earlier responses also provide some broken down figures on how many persons had been approached to participate in the trials, how many had been referred to the two services, how many had participated, and how many had exited the service for a variety of listed reasons. MSD had earlier also presented some figures on how many had refused or declined to participate. I may refer to MSD’s responses from 24 April 2014 and 26 February 2015. Then there were hardly any figures provided for persons placed in employment (only a small number was mentioned in the earlier response from 24 April 2014).

The way the responses are given, it is unclear whether the numbers for persons for both trials that have been put into employment are for the whole periods the trials have run, or just for the one month (February 2015). Also are the figures somewhat dated, and older than 8 months, which is not the kind of update I had sought.

I must ask for clarification re the persons placed into employment, whether the numbers provided for the end of February this year are totals for the whole trial period, or just for that one month, and hence I seek your assistance to commit MSD to give a clear answer.

It is in my view also unacceptable that MSD will apparently not provide any evaluation on their trials prior to June 2016, while Jo Goodhew did as Associate Minister inform Carmel Sepuloni, Spokesperson for Social Security for Labour, during Question Time in Parliament on 17 September 2015, that an interim evaluation would be presented later this year, which was already planned to be provided in the middle of this year. It appears that MSD are
repeatedly postponing the evaluation of their trials, and leave the public in the dark about the actual outcomes of trials. While that may be out of scope for you as Ombudsman to take any action on, I do at least seek the above mentioned clarifications for the end of February data.

Requests/questions 20 and 21

MSD have not provided any answer at all to my remaining two questions in my Official Information Act request from 08 July 2015. MSD have not given any information on ‘Work Ability Assessments’ and ‘Specialist Assessments’. And no reason has been given for this. Whether this was an honest oversight, or whether MSD staff may have conveniently forgotten to provide that information is a matter I can only speculate about.

In any case, I feel I should have been provided the sought information, or if it cannot be made available, or would be withheld for a particular reason, then I would expect a clear statement to that effect. Hence I must ask your Office of Ombudsmen to again remind MSD of their obligation under the Official Information Act, and to provide the information.

To summarise the above, I consider that I still deserve a response or further response in respect of questions 1 to 3 in my first OIA request from 08 July 2015, and that I still deserve a further response to questions in my second request from 08 July 2015, being to questions 1 to 4 (on whether reports existed, and why they no longer exist), to question 7 (provision of conflict of interest forms), question 8 (conflict of interest declarations by Dr Bratt and Anne Hawker), question 9 (why are reports missing, and who paid Dr Bratt’s other costs), question 10 (share of costs paid), questions 13 and 14 (clarification on some MAB data), questions 18 and 19 (clarification re persons in work, for what period, also further data previously made available) and questions 20 and 21 (no answer at all was provided).

I regret having to seek your assistance yet again, but given the response by MSD, I must consider that it is for me the only logical next step to ask for your intervention, so to ensure that MSD actually provide the information that was requested.

As usual, your response in due time will be much appreciated.

Yours sincerely

Xxxxxxx Xxxxxxx

Attachments (15 PDF files) to email(s) carrying this letter, plus 1 reference/link:

1). ‘MSD, O.I.A. request, base benefit rates, break down into cost components, 08.07.15.pdf’;
2). ‘MSD, O.I.A. request, Dr Bratt, MHES, SPES, WAA, reports, WINZ sundry data, 08.07.2015.pdf’;
3). ‘MSD, O.I.A. request, MHES, WAA, reply, Xxxxxx, Xxxxxxx - Final response dated 24 April 2014#2.pdf’;
4). ‘MSD, O.I.A. request, MHES, WAAA, other suppt services, issues, reply, 26.02.2015.pdf’;
5). ‘Ombudsman, OIA complaint, MSD, ref. 4xxxxx, further complaint ltr, X. Xxxxxx, 22.11.15.pdf’;
6). ‘Bratt + Aylward - Shifting Your Primary Focus to Health and Capacity, June 2013.pdf’, file with a joint presentation by Dr Bratt and Prof. Aylward, from June 2013;

7). ‘1100 - cs3-a - happy docs true generalism with welfare reform - david bratt, July 2013.pdf’, a further presentation by Dr Bratt, containing info sourced from Aylward, see slides 15, 18, 19 + 26, from July 2013;

8). ‘Fri_DaVinci_1400_Bratt_Medical Certificates are Clinical Instruments too - June 2012.pdf’, another Bratt presentation, 2012, see reference to Prof. Aylward, slide 20;

9). ‘Aylward presentation, worklessness and health, a symposium, media_210440_en, d-load 27.03.2014.pdf’, a presentation by Prof. Dr Aylward, showing clear similarities in contents and reference sources to the ones presented by Dr Bratt;

10). ‘Public Health Wales, Aylward to meet Bratt, 25 02 Chair report June 13 v1, June 2013.pdf’, a publication showing details about meetings between Dr Bratt and Professor Aylward, June 2013; Web link: http://www2.nphs.wales.nhs.uk:8080/PHWPapersDocs.nsf/($All)/D211789B7097C94A80257B8D004E4F08/$File/25%2002%20Chair%20report%20June%202013%20v1.pdf

See also, a brief profile of Mansel Aylward, being also “Chair” of Public Health Wales: Web link: http://medicine.cf.ac.uk/person/prof-mansel-aylward/research/

11). ‘Public Health Wales’, ‘Chair Report’, 16 June 2014, with mention of Dr Bratt’s visit to the UK in May 2014, on the second leg of his visit to Europe early this year (see paragraph 11); file name: ‘Public Health Wales, 32 02 Chair report v1, Aylward + Bratt meet in UK, June 2014.pdf’


12). NZ Doctor magazine article on ‘Health and Disability Panel’:
‘NZ Doctor, Four GPs advise on new benefit, Helen Tatham, H + D Panel, 29.02.2012.pdf’

13). Official Position Description for ‘Principal Health Advisor’:
‘MSD, O.I.A. Request, Principal Health Advisor, position description, Jan. 2007.pdf’.

14). ‘GPNZ, European conference participation, Dr Bratt, 2014-Masterclass-Programme-FINAL.pdf’, a record showing other evidence on Dr Bratt visiting Europe in early 2014;


16). Paula Bennett’s speech to medical professionals, 26 Sept. 2012, mentioning consultation with Mansel Aylward, and his and Dame Carol Black’s input, in the form of advice on the New Zealand welfare reforms: