Dear Mr Txxxxx Xxxxxxx, dear Ombudsman and dear staff at the Office of Ombudsmen

Thank you for your email and letter dated 12 March 2018, which I received today, and with which you provide me an update and a provisional decision on my OIA complaint dated 1 and 22 November 2015, being processed under your reference number 41xxx7.

I appreciate that you are still awaiting a further report from MSD in relation to the second, more comprehensive OIA information request I made to the Ministry on 8 July 2015. I note that you expect to receive that report within a fortnight, which will then need to be considered by your Office, before you can write to me again regarding that separate matter.

You have with your letter of 12 March also provided me with your view that it would be unnecessary for your Office to further investigate a part of my complaint relating to MSD’s earlier response of 19 Nov. 2015. That was regarding insufficient information being present in reply to my first request of 8 July 2015, which was about specified details I had sought about components - or parts - making up total benefit rates.

It is correct that MSD did by email send me an ‘updated explanation’ as a further response to my original request of 8 July 2015, and also in response to the complaint I made to your Office. This explanation was provided in addition to their first response of 19 Nov. 2015.

That ‘explanation’ appears to have been provided by MSD’s ‘Policy Team’, but it has not answered my request dated 8 July 2015, which was sufficiently clear and specific.

I may in the following quote one of my three requests that I made then. I asked for:
“Information in the form of a detailed break-down of the main benefit type Jobseeker Support, into the separate components or parts of the base benefit, that are allocated to cover costs for food, clothing, accommodation, transport/travel, electricity, water, phone costs, social spending, and so forth, based on calculated average costs a benefit is intended to cover.”

I requested that same kind of detailed or broken down information also for the ‘Supported Living Payment’ and the ‘Sole Parent Support’ benefit types.

To avoid any misunderstandings, in my original request I also added the following: “I am aware of additional supplements and allowances being available as further assistance, like the accommodation supplement, disability allowance and temporary additional support, which are covering additional costs, which cannot be covered by the base benefit.

But I know that the base rates are based on calculations for basic, average costs of living, and I seek the details of these calculations, for each single, usual cost type or category.”

In my complaint letter to your Office, dated 22 Nov. 2015 I later wrote the following: “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).”

I explained that MSD had in my view not provided the particular information that I had sought, and that I had not asked them for a ‘legislative formula’.

As I believed that a similar approach would be taken to benefit rates as there appears to be to student allowances (paid by ‘Studylink’), I also pointed out the following: “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

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.”

On 9 March 2018 MSD provided me with a number of what I would call objectives and considerations they use when determining benefit rates. You write in your letter: “The Ministry’s Policy Team explained that decisions on benefit rates involve balancing a number of competing objectives and issues, and provide you with a summary of those factors.”

You appear to accept MSD’s explanation that no formula or ‘cost calculations’ are used to set benefit rates, and that instead the current rates “have been arrived at by a series of historical decisions.”

As you suggest in your letter of 12 March 2018, I do indeed remain concerned that the Ministry does not refer directly to average costs of essential living costs like food, electricity, clothing and so forth, which it must nevertheless consider when setting benefit rates.

I do not for one moment believe that no calculations of whatever kind were ever made to work out benefit rates, which MSD themselves appear to consider as having to:
“provide a basic income to replace income that would generally be obtained through paid employment”;
“provide an adequate income to meet basic living costs, within a context that includes the availability of second and third tier assistance”;
“provide an adequate income to allow participation and belonging in society”, and to “achieve broadly equivalent living standards for different household types receiving the same benefit”.
(See the email sent to me by MSD at 14.09h on 9 March 2018).

In order to achieve just those few objectives, any government department such as MSD has to base its decisions on factual and relevant information that measures living costs an ordinary person would have to cover. And such costs are commonly and usually measured in monetary terms. Also would a government department have to work by making decisions that are evidence based, not simply grabbed out of thin air, or based on subjective views.

Furthermore, any application a beneficiary or potential beneficiary may make to MSD’s department Work and Income asks for detailed information including received income, held assets, existing living cost expenditure, and so forth - in NZ Dollar terms, in order to work out any entitlements an applicant to a benefit or supplementary allowance may have.

The ‘explanations’ given by the ‘Policy Team’ at MSD are rather general and anything but convincing, and they appear to distract from my specified requests, and I cannot accept such a response to my OIA requests, as it is completely unreasonable.

Also do I consider it unreasonable that I should request further information or seek further clarifications from MSD, as my initial request was already clear and specified enough.

I would consider that your Office must have regard to all the circumstances of the case, which includes MSD providing such an unreasonable response to me, before making any decision based on section 17(1)(f)(ii) Ombudsmen Act 1975, to decline to further investigate this matter, as in my view a further investigation is absolutely necessary.

Last not least, MSD refers to a “series of historical decisions” that current benefit rates are based on, but offers no detailed, identifiable information at all on these decisions, which is again an unreasonable refusal of information, which they do nevertheless appear to consider as being relevant enough to consider when responding to my request.

I do therefore not agree with your view that a further investigation is unnecessary, and ask you to further challenge the Chief Executive and his/her staff at the Ministry of Social Development, to present some factual, evidence based information, e.g. used living cost data representing ordinary, common average costs that ordinary benefit recipients have, which must be used when considering and setting benefit rates. MSD may rely on Statistics NZ or other sources for information, but must be expected to present or point to such information.

Yours sincerely and thankfully

Xxxxxxx Xxxxxxx

Attachment (2 PDF files) to email carrying this letter:
1). ‘Ombudsman, complaint, 41xxx7, MSD, failure to comply w. OIA rqst fr. 08.07.15, reply to update, 12.03.2018.pdf’;
2). ‘MSD, OIA Rqst, benefit rates, break down, 08.07.15, fin. email reply, MSD, scan, 09.03.2018.pdf’. 