SOCIAL SECURITY BENEFIT RATES IN NEW ZEALAND – SET AT WILL BY GOVERNMENTS, IGNORING SOCIO-ECONOMIC REALITIES AND EVIDENCE

Published 23 May 2018

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A) INTRODUCTION

After we already presented some interesting information made available by the Ministry of Social Development (MSD) in response to various Official Information Act (OIA) requests on earlier occasions, we can now present you more, some of which will be of significant interest to readers.

In the early hours on 9 July 2015 two new formal OIA requests, both dated 8 July 2015, were sent in to MSD by a requester by email, with 2 attached letters. The first request was rather straight-forward and simply asked for a breakdown of three types of benefits into components that should cover certain essential living costs. The second request was a bit more complex and specific, and it asked for some comprehensive information on a range of topics and areas. That request did for instance ask for expert advisors’ reports on health, disability and work-ability assessment matters that may have been used by the government in the process of preparing and formulating policy brought in as welfare reforms. Reports from external and internal advisors were asked for, same as copies of correspondence between MSD’s Principal Health Advisor Dr Bratt and the UK ‘expert’ advisor Mansel Aylward, and others, at the ‘Centre for Psychosocial and Disability Research’ in Cardiff, Wales. Some other information asked for included conflict of interest declarations by members of a Health and Disability Panel that was set up to consult on welfare reforms, same as conflict of interest declarations by MSD’s Principal Health and Disability Advisors. Further information was requested about the Principal Health Advisor Dr Bratt’s trip to Europe and the UK, about expenses paid for Designated Doctors, Host Doctors and Medical Appeal Board (MAB) hearings. Some data was sought on the numbers of MAB hearings and outcomes, on outcomes of so-called “social impact bond” funded trials, on outcomes of Mental Health Employment Services and Sole Parent Employment Services programs, same as on commissioned ‘Work Ability Assessments’ and ‘Specialist Assessments’. This post does though mainly focus on the first request and its responses.

The requester, whose name and details we intend to withhold for privacy reasons, did expect both complaints to be handled separately, and anticipated a reply to the first response within 20 working
days, as required by the OIA. He did not expect a response to the second request letter within that time frame, as he understood that some of the questions asked in that one would require more time to be answered to, which would most likely also require a fair bit of collation of information.

Hence it was not surprising to the requester that he did on 3 August 2015 receive an email from MSD (their ‘Official and Parliamentary Information team’), advising that the Ministry would need an extension of time to respond to the OIA requests. There was no separate early response to the first OIA request, and so it appeared as if it would be processed together with the second request. A PDF containing a letter that was attached to the email advised him that: “The Ministry’s response will be with you no later than 3 September 2015”. Already on 28 July 2015 MSD had informed him by email and attached letter, that one question about “social impact bond funded projects” had been transferred to the Ministry of Health, as MSD did not hold the sought information. Receipt of that one request had also been confirmed by Fox Swindells, OIA Co-ordinator (Government Relations, Office of the Director General) at the Ministry of Health, by email on that same day.

While awaiting a response, the requester did on 3 September 2015 receive another email from MSD, updating him that the Ministry was unable to provide a response on that day. However, the letter advised that the request was then being processed with urgency, and that the Ministry would respond as soon as possible.

By 8 October 2015 the requester had still not received the information that was supposedly being prepared “with urgency”; hence he did on that same day send in an email to the OIA contact address of the Ministry, for which no identifiable name of any person had previously been provided. He asked for an update on the matter, mentioning the earlier responses by MSD. Expressing his understanding that it may take some time to prepare the response, as the information sought was more comprehensive than many common OIA requests, the requester pointed out that three months had now passed. He asked whether the response might take another two weeks, or a month, and he also wrote that if no response should come forth by the end of the month, he would consider bringing the matter to the attention of the Ombudsmen.

All that he received upon that email was yet another email with yet another apology from MSD, signed by a ‘Ministerial & Executive Services Advisor’ (with no name). The email informed him that the response was currently under review and was expected to be “signed out within the next couple of days”. “The response will be with you by the end of the month if not sooner”, it also said.

But for the following weeks there was again no response forthcoming from MSD, while at least the Ministry of Health had already presented a response to one particular request by email on 28 August 2015 (dated 25 August 2015). It did in the end take until 19 November 2015, when the proper formal response by MSD (to both OIA requests) was received by the requester (by email with an attachment).

In the following we will present you the requests or questions for the particular specified information the requester had asked for, and following that the responses given by MSD. As the response was initially delayed, and as some information was simply not provided with MSD’s formal response (some of that again without giving any reasons), the requester was (like on earlier occasions) forced to file complaints with the Office of Ombudsmen, dated 1 and 22 Nov. 2015. He asked to have the responses by MSD investigated and reviewed. He sought the Ombudsman’s intervention, in order to obtain the remaining information from MSD, and to have the Ministry provide proper answers to the questions that had not been properly replied to. We will also present you those letters, and specify and outline the information that MSD withheld and refused. It took the Office of Ombudsmen over two years to investigate the issues with MSD’s OIA response, as complained about in relation to the first OIA request. And it took MSD two and a half years to provide further explanations on 9 March 2018. As usual some comments will be made regarding the questions put and the answers received, and what conclusions can be drawn from the provided, rather general and limited information.
B) OIA REQUESTS MADE TO MSD ON 8 JULY 2015

In the following we present the particular questions contained in the first OIA request, which the requester asked MSD to answer and to provide information on (dated 8 July 2015):

“Dear Mr Brendan Boyle, dear staff at the Ministry for Social Development

Please accept my request for the disclosure of the following specified information - under sections 12 and 16 of the Official Information Act 1982.

1. 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.

2. Information in the form of a detailed break-down of the main benefit type Supported Living Payment, 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.

3. Information in the form of a detailed break-down of the main benefit type Sole Parent 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 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.

The above requested specified information is sought to be made available under the Official Information Act 1982 within the specified time frame of 20 working days.

I kindly and respectfully ask that the information is made available by way of a sufficiently detailed written response, containing the relevant information. Otherwise it can also be made available by way of equally good quality computer generated printouts containing the information or part thereof.

Thank you for your acknowledgment and appreciated co-operation.

Yours sincerely

Xxxxxxx Xxxxxxx”

Here is a copy of the OIA request letter, sent to MSD by email in the early hours on 9 July 2015: https://nzsocialjusticeblog2013.files.wordpress.com/2018/03/msd-o-i-a-request-to-c-e-of-m-s-d-base-benefit-break-down-anon-08-07-15.pdf
Comments by the author

For decades New Zealanders on benefits have had to struggle and cope on their meagre incomes, while receiving main or base benefits that are for many people not enough to survive on. Only those choosing to live in cramped conditions in shared homes may in some cases manage to get by on the main benefit alone. The vast majority of beneficiaries do require top-ups of benefits, for accommodation and disability related costs, and for various other essential living expenses, in order to survive on a shoestring budget - or less. Additional supplements and allowances, including also the ‘Temporary Additional Support’ (in short TAS, which replaced the former Special Benefit) are often capped or have set maximum limits. But the particular rates - or claimable amounts - for these are known. The main benefits, although insufficient to really cover all essential living expenses, should by a person’s reasonable presumption have been calculated following some kind of a formula, to cover a range of very basic standard costs per person, and that is what the requester wanted to get details on.

In the following, and for your interest, we present a PDF with an authentic, partly redacted copy of the second and more comprehensive OIA request of 8 July 2015, containing 21 further questions (or points of request) that were also sent to MSD to respond to: https://nzsocialjusticeblog2013.files.wordpress.com/2018/03/msd-o-i-a-request-to-c-e-of-msd-bratt-hd-panel-reforms-anon-08-07-15.pdf

We will not go into detail about this second request, as this post will focus on the first and shorter OIA request for information on benefit components, or parts of benefits, that one would presume should cover particular living cost items every ordinary person would have to meet (at a bare minimum).

C) THE MINISTRY OF SOCIAL DEVELOPMENT’S (MSD’s) FIRST FORMAL RESPONSE TO THE REQUESTS, DATED 19 NOV. 2015

As a very first response, MSD wrote back to the requester by email at about 12.52h and 13.59h on 9 July 2015, sending two virtually identical standard email confirmations for the receipt of the requests, which had been referred to the ‘appropriate officials at National office to respond’. A response to the OIA requests was indicated to follow “as soon as possible”.

AT 13.23h on 28 July 2015 the requester received another email from MSD, with an attached PDF letter, informing him that one request point from his comprehensive OIA request had been referred to the Ministry of Health for a response.

This was followed by yet another email letter sent at about 16.17h on 3 August 2015, which had a separate PDF with a formal letter attached. The letter explained that the Ministry needed to extend the time for responding to the OIA request, and it informed the requester that the Ministry would respond to his request by “no later than 3 September 2015”. For a reason, a mention was made of the “large quantity of information” that the requester had asked for.

But at about 14.39h on 3 Sept. 2015, a person at the Ministry wrote back to the requester, informing him by way of an update, that they could not provide a response with the asked for information to his two requests ‘today’. An unnamed person identified only as ‘Ministerial & Executive Services Advisor’ wrote that the Ministry was currently processing the request with urgency, and that they would respond ‘as soon as possible’.

In the early hours on 8 October 2015 the OIA requester wrote back to MSD, referring to the email received on 3 Aug. 2015 (with an attached PDF containing a letter), which had informed him that he could expect a response to his information request no later than 3 Sept. 2015. The requester wrote that
it was about two months since he had made his request, and that he had last been informed that the matter would be dealt with under urgency.

He wrote that three months had now passed, and while he showed an understanding for the response requiring some time, he asked for a clear indication as to when he could expect a response. He asked whether it would take another two weeks, or perhaps a month, but expressed his expectation for a response no later than by the end of that month, as otherwise he would need to bring the matter to the attention of the Ombudsmen.

At 08.14h on that same day (8 Oct. 2015) the requester received another email from a person at the Ministry, again only identifiable as ‘Ministerial & Executive Services Advisor’. The unnamed person now wrote that the response was ‘currently under review’, and that it was expected to be “signed out within the next couple of days”. The response would be with him “by the end of the month if not sooner”, the MSD Advisor wrote.

Only at 10.55h on 19 November 2015 would the OIA requester finally receive an email from MSD, with the attached response (contained in a PDF file, consisting of a six page letter and 3 pages of attachments). That was over four months after his request!

Here we can now present the response with the answers that were received from MSD by email and attached letter on 19 November 2015. The partly redacted transcript of MSD’s response, from the letter received, and quoted below, relates to the first OIA request with three questions:

“19 NOV 2015

Mr Xxxxxxx Xxxxxx
Xx Xxxxxxxx Xxxxxx
Xxxxxxxx
Auckland 1xxx
Xxxxxxx_xxxxxx@xxxxx.xxx.xx

Dear Mr Xxxxxxx

On 08 July 2015 you emailed the Ministry two letters requesting, under the Official Information Act 1982, information on Jobseeker Support, Supported Living Payment, Sole Parent Support and various reports relating to health and disability research. This letter responds to both of your requests for information and addresses 24 questions.

I will address each of your questions as follows:

Questions 1 to 3 (Benefit breakdowns and living costs):

New Zealand’s main benefit system provides a basic income to replace income that would generally be obtained through paid employment. Benefits are funded through general taxes. The initial rate of benefit depends on the benefit type and whether the person is single, partnered or a sole parent. The rate of payment does not relate to the person’s previous income from employment, rather it is intended to provide an adequate income to meet basic living costs.

There is no legislative formula used to decide the “correct” rate of benefit however a number of competing objectives and issues must be taken into account, including whether the rates:
• provide an adequate income to allow participation and belonging in society.
• are economically sustainable.
• maintain incentives to work.
• maintain incentives to study (particularly in the case of younger people).
• achieve broadly equivalent living standards for different household types receiving the same benefit.

The standard weekly rates of the main benefits are increased every year on 1 April. This increase reflects changes in the Consumer Price Index (CPI) in the previous year. Unlike New Zealand Superannuation rates, main benefit rates are not linked to any measurement of wages.”

The full response letter was signed by Carl Crafar, Deputy Chief Executive for Service Delivery.

Answers to questions 1 to 21 of the second OIA request dated 8 July 2015 have not been included in this transcript, as this post is about the responses sought to questions about benefit components that should cover living costs of beneficiaries. You can look up the whole response, contained in a PDF containing a scan copy of the letter by MSD dated 19 Nov. 2015 for those details.

Please find under these two links an anonymised scan copy of MSD’s OIA response of 19 Nov. 2015, one “clean” copy, and an extra one, that has highlighted text parts (and some notes):

Here is also a scan copy of the Ministry of Health’s response to request/question nr. 17, contained in the second OIA request letter of 8 July 2015:

An earlier post covering the whole OIA request, MSD’s first responses, and the requester’s Ombudsmen Office complaint was published on this Blog on 27 Nov. 2015, under the title: ‘THE MINISTRY OF SOCIAL DEVELOPMENT’S SELECTIVE AND POOR RESPONSES TO NEW O.I.A. REQUESTS ON BENEFITS, ADVISORS, REPORTS, MENTAL HEALTH AND SOLE PARENT EMPLOYMENT SERVICES’:

It can be found by clicking this following hyperlink:

And here is the newest, updated and current PDF version (as on 10.04.18):

D) OMBUDSMAN COMPLAINTS OF 1 AND 22 NOV. 2015

Given the fact that MSD did not provide the asked for information within the stipulated time frame of 20 working days, and then also not within the time they had indicated after seeking an extension of time to respond (by email on 3 August 2015), the OIA requester had by 1 Nov. 2015 again seen a need to file a formal complaint with the Office of Ombudsmen.
By way of a letter dated 1 Nov. 2015, the OIA requester - turned complainant - raised his concerns that MSD had failed to respond to his request, despite of having announced earlier on 8 October 2015, that a response was ready for ‘sign off’ and due to be sent out in days. He presented a copy of that email, which he had received on 8 October, and also copies of earlier email correspondence with MSD that occurred between 9 July and 8 October 2015.

A PDF file with the authentic text of that letter by the complainant, dated 1 Nov. 2015, partly redacted for privacy reasons, can be found via the following hyperlinks: 


That complaint would at first be treated like a mere ‘delay complaint’, but after finally receiving the response by MSD, dated 19 Nov. 2015, the OIA requester and complainant would later file a more comprehensive, formal complaint with the Ombudsmen, raising his concerns about, and objections to, the OIA response - by way of another letter (sent in by email), dated 22 November 2015.

But prior to that, he would receive a first standard-type email response from the Office of Ombudsmen, dated 2 Nov. 2015, bearing no signature or name. It confirmed the receipt of his correspondence of 1 November, and he was informed that his complaint would be processed under their reference 41xxx7. Some other standard kind of information was also provided.

A PDF file containing an authentic scan copy of that email of 2 Nov. 2015, partly redacted for privacy reasons, can be found via the following links:


On 20 Nov. 2015 the complainant received an email with an attached letter from the Ombudsmen Office, signed by Ombudsman Leo Donnelly. The same letter would also be sent to him by post, and received by him on 23 Nov. 2015. Mr Donnelly wrote on behalf of Chief Ombudsman Ron Paterson, acknowledging the complaint, and informed the complainant that they were making enquiries with the Ministry. Mr Donnelly wrote that a decision (by MSD) on the requester’s OIA requests was to be made and communicated to him in the next few weeks. If he was not satisfied with the ‘substantive’ response, he should feel free to write to Dr Paterson again, so the letter ended.

A PDF with an authentic scan copy of that letter by Leo Donnelly, partly redacted, and dated 20 Nov. 2015, can be loaded via the following links:


While having entered correspondence with the Ombudsmen Office, the complainant would in the meantime receive the long awaited, much overdue further correspondence from the Ministry of Social Development in the form of their formal OIA response, dated 19 November 2015.

After receiving MSD’s formal response on 19 Nov. 2015, and finding that a number of requests were not properly answered, partly due to stated OIA refusal grounds, and partly with no satisfactory explanations given, the OIA requester and complainant wrote his further second formal complaint letter to the Office of Ombudsmen, dated 22 Nov. 2015.

He referred to his earlier “delay complaint”, and explained how he had now received a response from the Ministry on 19 Nov. 2015, which was though not satisfactory, as MSD had withheld information “without giving any acceptable reasons for this”. He explained his concerns and issues with the response by separating the two requests and responses, which he had received, one from another.
Regarding the first three request points relating to benefit components, he wrote that MSD had in his view failed to properly answer those three questions. He wrote in the end of his letter that he considered that he still deserved a response – or further response – in respect of his requests or ‘questions’ 1 to 3, same as to some other ones made with his second letter of 8 July 2015.

A PDF with the authentic text of the further complaint letter by the complainant, dated 22 Nov. 2015, that was sent to the Ombudsmen, can be found via the following link (partly redacted): https://nzsocialjusticeblog2013.files.wordpress.com/2018/03/ombudsman-complaint-msd-failure-to-comply-with-oia-rqst-fr-08-07-15-anon-22-11-15.pdf

This is an authentic transcript of what the complainant wrote in his complaint of 22 Nov. 2015, in relation to his first OIA request with three questions re benefit rates and what components they may contain:

“Complaint about the Ministry of Social Development (MSD) failing to provide information under the Official Information Act 1982 (O.I.A.), as per my two requests dated 08 July 2015; your reference number 41xxxx

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:


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.

The complainant would close his letter to the Ombudsman with the following comments:

“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”
Altogether 15 attachments and one particular hyperlink reference were sent with his complaint letter, listed at the end of it. They also included some earlier OIA responses from MSD, mostly relating to particular issues raised re the responses to his second request letter of 8 July 2015.

Author’s note:

When you click the hyperlink to the Studylink website that is shown in the text of the above quoted letter, you will find a page that has been changed. The information that used to be shown there is no longer to be found. Quite clearly, MSD management took some action to have their website redesigned, and they ensured that no detailed information is found on particular types of living costs they had once listed as being considered as standard living costs. All that is shown now is an overview over aspects to consider when intending to study, under the heading ‘Can you afford to study?’.

Further Ombudsman OIA complaint correspondence

Following that complaint letter, Deputy Ombudsman Leo Donnelly wrote back to the complainant on 21 Dec. 2015, thanking for his letter, apologising for the delay in responding, and informing him, that his complaint would be allocated to an investigator (after another assessment had already been made). The complainant would be contacted by the Manager in charge of the Investigation and Resolution Team at the Auckland Office of the Ombudsmen, when there was progress to report, so the letter said.

A PDF file containing the authentic scan copy of that letter by Leo Donnelly, and of further email correspondence in the complaint matter, can be found by clicking the following links:

It did regrettably take another two years for the complainant to finally see any actual ‘progress’ in the matter, which only happened after yet further correspondence (particularly between May and Dec. 2017), where the complainant asked for some updates and was on occasion provided with this.

Then, suddenly in mid January 2018, the Ombudsman’s ‘Acting Senior Investigator’ wrote back to the complainant and information requester, with a letter dated 15 January 2018. The person wrote on behalf of Chief Ombudsman Mr Boshier, and explained that he was now investigating this complaint. Apologies were made for the lengthy delays due to ‘workload pressures’. In referring to the OIA requests in question, and the complainant’s letter of 22 Nov. 2015, it was explained that ‘not all the issues raised’ constituted OIA complaints. That was though more the case with the second OIA request letter. It was acknowledged, though, that the complainant was of the view that the responses he received to his first OIA request with three questions on benefit rates as being ‘inadequate’.

The complainant was informed by the Investigator that the Ombudsmen Office had written to the Chief Executive of MSD, Mr Brendan Boyle, notifying him of the complaint. A report on MSD’s response and re the requests had been asked for, same as re the issues raised with the complaint.

A PDF with the authentic letter by that ‘Acting Senior Investigator’ and the Ombudsmen’s Office, dated 15 Jan. 2018, only partly redacted for privacy reasons, is found via these links:
The Ombudsmen Office’s proposed part decision

It would take until mid March 2018, until the Ombudsmen Office would present its part decision on complaint 41xxx7. This time the Manager for Investigations and Disputes Resolution at the Auckland Office of the Ombudsmen, Mr T. Xxxxxxx, wrote himself to the complainant, on behalf of Mr Boshier. By way of his update, he confirmed that the Ministry had provided a report to the Chief Ombudsman. He also acknowledged that the Ministry had in addition to that provided the complainant with an updated explanation in response to his first OIA request.

Indeed, MSD had on 9 March 2018 sent the OIA requester another email, offering further explanations to OIA requests 1 to 3 in the first request letter of 8 July 2015. But that information was not much different to what had already been provided with the initial response of 19 Nov. 2015. The further response by MSD can be loaded via a link further below, under Part or Chapter ‘E’ in this post.

By referring to the Ministry’s initial response and advice, and to the OIA requester’s and complainant’s relevant comments in his letter of 22 Nov. 2015, the Manager at the Auckland Ombudsmen’s Office wrote the following:

“On 9 March 2018 the Ministry provided you with an updated explanation confirming that no formulae 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’. The Ministry’s Policy Team explained that decisions on benefit rates involve balancing a number of competing objectives and issues, and provided you with a summary of those factors.

It may be that you remain concerned that the Ministry does not appear to directly refer to average costs of various essential items, such as food, electricity and clothing, when setting benefit rates. However, it is difficult to see what further information could be provided by the Ministry in response to your request for a ‘breakdown’ of benefit rates. Any concerns you may have about the policy adopted by the Ministry when setting benefit rates, or requests for further information or clarification of information already provided, should be addressed directly to the Ministry for its consideration.

Section 17(1)(f)(ii) Ombudsmen Act 1975 provides that an Ombudsman may decline to further investigate a complaint if it appears that, having regard to all circumstances of a case, and having commenced an investigation, further investigation is unnecessary.

In the circumstances it would appear that further investigation of your complaint about the Ministry’s response to your first request of 8 July 2015 is unnecessary.”

So the Chief Ombudsman appeared to have little interest in taking that matter any further, but the complainant was at least allowed to offer his further comments by Thursday 29 March 2018.

A PDF file with an authentic scan copy of that letter by the Manager in charge of Investigations and Resolution at the Auckland Office, dated 12 March 2018, partly redacted, is found here:

The complainant’s further submission to the Ombudsmen Office

Continuing to be concerned about the in his view still unsatisfactory response by MSD to his information requests, the complainant wrote back in response to that letter by the Ombudsmen’s Office, presenting his largely unchanged position.
Acknowledging the email and letter by the Auckland Office’s Manager of 12 March 2018, and confirming he had received a further ‘updated explanation’ from the Ministry of Social Development, the complainant wrote that his requests of 8 July 2015 had still not been answered.

While quoting some explanations given by MSD, he repeated his sufficiently clear and specific points of request made then, and referred to the treatment of student allowances that the Ministry also granted and paid via ‘Studylink’, and what considerations were apparently made for calculating those.

He wrote also: “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.”

He listed the objectives that MSD appears to be considering when setting benefit rates, and he wrote: “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.”

A PDF file with the authentic text of the complainant’s response to the provisional part decision by the Office of Ombudsmen, dated 12 March 2018, slightly redacted, is found via this link: https://nzsocialjusticeblog2013.files.wordpress.com/2018/04/ombudsman-complaint-41xxx7-msd-failure-to-comply-w-oia-rqst-fr-08-07-17-ltr-anon-12-03-18.pdf
The Ombudsman’s final decision on the (first part of) the OIA complaint

But the complainant’s efforts to challenge the Ombudsmen Office to take a firmer stand towards the Chief Executive at MSD were to no avail, as the same Manager for Investigations and Resolution at the Auckland Office soon wrote back with his final decision on this aspect of the OIA requester’s complaint, which was dated 19 March 2018.

He wrote again on behalf of Chief Ombudsman Boshier, basically upholding his already announced decision of 12 March 2018. He referred also to the schedules in the Social Security Act 1964, in which benefit rates were set by Parliament, most likely based on advice by the Ministry. Those actions were outside the scope of the Chief Ombudsman’s investigation and review (authority) under the OIA, he wrote. He asserted that what the complainant had raised with his complaint was predominantly a ‘policy issue’, rather than a request for official information under the OIA.

So the Manager at the Ombudsmen Office decided that further investigation of the complainant’s complaint about the Ministry’s response to the first part of his OIA request was ‘unnecessary’, and that the Chief Ombudsman’s investigation of that matter had been discontinued.

A PDF with an authentic scan copy of that final decision by the Office of Ombudsmen, dated 19 March 2018, and with some personal details concealed, can be loaded by clicking these links:


E) MSD’s FURTHER RESPONSE OF 9 MARCH 2018

As mentioned above, there was one further response provided by the Ministry by way of an email, which had been sent to the OIA requester and Ombudsmen Office complainant on 9 March 2018. This response was not all that much different to the initial response that MSD had provided on 19 Nov. 2015. But it contained some further new comments, which referred also to the schedules in the Social Security Act 1964, which contained the actual benefit rates set by Parliament.

Diane Anderson – ‘Manager Complaints Management Insights and Improvements’, at MSD wrote on 9 March 2018 (by email):

“Dear Xx Xxxxxx

I refer to your OIA request of 08 July 2015 in which you had sought a ‘breakdown’ of the Jobseeker Support benefit, the Supported Living Payment and the Sole Parent Support benefit with reference to costs for food, clothing, accommodation, and so on.

The Ministry had previously responded that there was no legislative formula to determine benefit rates, but that the rate depends on factors such as benefit type, and whether a person is single or has dependent children.

You were of the view however that the Ministry’s response was inadequate and had laid a complaint with the Office of the Ombudsman who had asked us for a to provide more of an explanation of how benefit rates are determined.

We have consulted our Policy Team and a fuller explanation of how benefit rates are determined is given below:
Benefit rates

1 The working age benefit rates are set out in the schedules to the Social Security Act.

2 The main benefit system provides a basic income to replace income that would generally be obtained through paid employment. Benefits are funded through general taxes. The initial rate of benefit varies according to the benefit type and whether the person is single, partnered or a sole parent. The rate of payment does not relate to the person’s previous income from employment, rather it is intended to provide an adequate income to meet basic living costs, within a context that includes the availability of second and third tier assistance. The current rates have been arrived at by a series of historical decisions. There is no legislative formula to derive “correct” rates of benefit, rather judgments have been made balancing a number of competing objectives and issues, including whether the rates:

• provide an adequate income to allow participation and belonging[1] in society
• are fiscally sustainable (both the rate paid and the number of people supported by benefits affect their affordability)
• maintain incentives to work
• maintain incentives to study (particularly in the case of younger people)
• are publicly accepted (generally perceived as not too high and not too low and are consistent with broad assumptions about the needs of the particular benefit group – for example the assumption that a person receiving Jobseeker Support will return as quickly as possible to paid work)
• achieve broadly equivalent living standards[2] for different household types receiving the same benefit.

3 By convention, the purchasing power of benefit rates is preserved by an adjustment on 1 April each year reflecting any increase in the cost of living as measured by the movement in the Consumers Price Index. The Social Security Act contains provision to make this adjustment mechanism a legislative requirement. Unlike New Zealand Superannuation rates, main benefit rates are not linked to any wage measure. Hence, under the current adjustment mechanism, benefit levels will rise relative to wages at times when prices move faster than wages, and fall relative to wages when wages move faster than prices.

4 Within each working age benefit type, different rates apply for people who are couples, sole parents or single (this rate also varies according to the age of the person).

5 Additional basic income support for dependent children is paid through the family tax credit. The rate of benefit paid for couples with children is the same as the rate paid to couples without children. All of the working age benefits contain a sole parent rate of payment, which is higher than the single rate. This means that a sole parent can have his or her family circumstances recognised through any of the main benefits. The sole parent rate is the same regardless of the number of dependent children. New Zealand Superannuation is not a working age benefit and has a different rate structure for single people and couples.

Note [1]: ……..(see scan copy provided under relevant link below!)

Note [2]: ……..(see scan copy provided under relevant link below!)

I hope you would find our explanation as above, an adequate response to your OIA (Request 1) of 08 July 2015.

Kind regards Diane”
A PDF containing an authentic scan copy of the final email response by Diane Anderson of the Ministry, dated 9 March 2018, can be found via these links (only partly redacted):

F) ANALYSIS OF THE INFORMATION PROVIDED BY MSD

The OIA requester was presented with two responses he received from the Ministry, one dated 19 Nov. 2015, the other one dated 9 March 2018, and they contained more or less the same information. Re the responses to questions 1 to 3 of the first OIA request from 8 July 2015 MSD continued to maintain that there was no legislative formula used for calculating and setting benefit rates. They were not based on particular living costs, it seemed. Benefit rates would rather depend on a person’s circumstances, i.e. whether being single, or in a relationship and/or whether having dependants as a sole parent. The Consumer Price Index (CPI) was mentioned in the first response, to explain that inflation adjustments are made annually, as the Social Security Act 1964 appears to require it.

With the second response the Ministry then referred to the schedules in the Social Security Act, which would contain the current benefit rates, which had not been mentioned in their first response. Nevertheless, a number of factors were again listed, which were apparently being considered when determining benefit rates. Also did Diane Anderson mention ‘additional basic income support’ being available for parents with children, in the form of the family tax credit. This further response was provided to the OIA requester upon internal consultation with the Ministry’s ‘Policy Team’.

Besides of maintaining ‘incentives’ to work or study, benefits had to be ‘fiscally sustainable’, Diane Anderson wrote in her email letter. Also did she comment: “The current rates have been arrived at by a series of historical decisions.”

The first response by Carl Crafar, dated 19 Nov. 2015 listed (besides others) this objective:
“provide an adequate income to allow participation and belonging in society”.

The second response by Diane Anderson, dated 9 March 2018, listed (besides others) the same:
“provide an adequate income to allow participation and belonging in society”.

It is worth noting what the complainant wrote in his Ombudsmen Office OIA complaint of 22 Nov. 2015:
“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:
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.”

As was mentioned in a note further above in this post (under the transcript of the complainant’s letter to the Ombudsmen, dated 22 Nov. 2015), the page that now loads on the ‘Studylink’ website - when clicking the link provided - is no longer the same. Information that was once made available there is no longer to be found. Only simplified, brief, more general and less specific information is shown for the Student Allowance. We no longer find a reference to the ‘Housing Expenditure Survey 2007’.

That survey from 2007 will of course by now be well out of date, but one would have thought, that when determining any benefit rates, the Ministry would get its policy team experts source and use
some relevant scientifically gathered statistical information in the form of details on what an average person needs to cover his or her basic living expenses. How else can anyone determine what is an ‘adequate income’ for a person having to live off a benefit?

It appears though, that the Ministry is extremely reluctant to be nailed down on any details that may somehow be used to determine benefit rates, possibly for fear of people taking them to court or so, should benefit rates prove to be insufficient to enable a person to ‘participate’ and ‘belong’ in society.

It is beyond belief, that those in charge of forming MSD policy and offering advice, which is also used by the government of the day to make decisions on social security matters, including the setting of benefit rates, would not conduct any research and not make any calculations in whatever form. It is hard to believe that they would not base any advice or guidance to government on reliable, scientifically gathered statistical data from Statistics New Zealand - or any other agency.

Costs for food, clothing, accommodation, transport/travel, electricity, water, phone, social spending and so forth, these are factors that must surely be relevant and considered. But as it appears, at least going by the Ministry’s responses, they are not directly used when determining benefit rates.

So if this is true, then the Jobseeker Support, Supported Living Payment and Sole Parent Support benefit rates are simply set by the government of the day as they see fit, purely at will, possibly by following some form of undisclosed unscientific guidance or advice given by ‘experts’ within the Ministry. It is then presented to Parliament, either as a legislative instrument in the form of an Order in Council, approved by the Governor General, or in the form of a Bill. Only the latter would need to be read and voted on, to have it passed into law.

The Ministry, does appear to try and tell us that benefit rates are decided on by the government, then acknowledged or signed off by the Governor General and/or Parliament, so as if their own ‘Policy Development’ staff and management would have nothing to do with processes being followed. A look at their website on the page(s) found via this following hyperlink would suggest otherwise:

That is what they seem to be telling the OIA requester, although the information on their website says the following:
‘Developing policy
The policy group is the government’s principal provider of policy and social sector advice.”

More about the Ministry’s ‘policy branch’ can be found on their website by clicking the following hyperlink:

Of particular interest to readers will be the following information:

“Employment and Income Support

The Employment and Income Support policy group comprises three teams:
Youth Employment and Labour Market team: responsible for policy development and advice relating to labour market change and demand, and long term benefit dependency. The team focuses particularly on improving the education, employment and quality of life outcomes of disadvantaged young people.

Health and Disability Employment team: responsible for policy advice on addressing the barriers to employment faced by people with a health condition or disability. The team focuses on ensuring disabled people and people with health conditions are supported to obtain work and enjoy a higher quality of life.
**Income Support team: responsible for producing policy advice on a range of topical income support issues. The team focuses on ensuring that the benefit system is fair and robust and improving financial incentives to work or prepare for work.**

(as shown on the MSD website on 21 May 2018)

And that last bit tells us quite clearly, where MSD’s ‘Employment and Income Support’ policy group’s main focus lies:

A ‘fair’ and ‘robust’ benefit system, obviously primarily geared to ‘improving financial incentives to work or prepare for work’. And so they have for years been giving government ‘advice’ on policy that then led to actions like abolishing the former ‘Sickness Benefit’, to merging sick and disabled with other ‘jobseekers’ into the ‘Jobseeker Support’ benefit, and to leaving those on the only slightly higher ‘Supported Living Payment’ benefit languish in abject poverty, while they are too severely and permanently sick and/or disabled to engage in any forms of work on the open job market, which is one where they are expected to compete with the physically and mentally fit.

Author’s note:

For information on Legislative Instruments and Orders in Council, see the following links:

http://www.pco.govt.nz/about-legislation#lis

**G) CONCLUSION**

So in summary, we can conclude that the Ministry of Social Development (MSD) takes a position that it is not, at least not directly, involved in a process of determining base or main benefit rates. It appears to claim there are no considerations made in relation to having particular living costs be reflected in benefit rates – as components or parts of the whole base rate. Although the Ministry does clearly have a ‘Policy Team’, a ‘Policy Branch’ or ‘Policy Development Branch’, that does most certainly offer advice on various policy matters to the government of the day, it appears to disassociate itself from having any significant input in the setting of benefit rates. They do this, although the Ministry has an ‘Income Support team’ that is responsible for “producing policy advice on a range of topical income support issues”.

We are told it is simply the government, or rather the Minister of Social Development, asking the Governor General for approval of an Order in Council, when changing benefit rates, shown in the schedules of the Act. Or alternatively, if there are more significant changes planned, it is the government presenting a Bill to Parliament, seeking the introduction of, or major changes to, benefits and corresponding (new) rates, relying on a majority vote to pass such a legislative change into law.

Hence, in our view, we are back to the business of passing the buck, the splitting of hair, and more obfuscation and pretence, as it is simply not all that credible, that MSD and their researchers and policy advisors play no significant, effective role in the way benefits are set. It appears that the advice that must nevertheless be given to governments is simply not based on any scientifically gathered statistical data on ordinary, average, basic living costs people in New Zealand have to pay. It is advice that appears to rather be driven by considerations of a few factors, including such that ensure people are kept poor enough, to feel an ‘incentive’ to work, or at least to study and thus prepare themselves for work on the open job market.

When some wages are so low, that many working full time are now also considered to be ‘working poor’, and when those working are struggling to meet basic living costs, then the Ministry appears to be advising government to still keep benefits lower than such wages, so that people have ‘incentives’
to work. That is basically where many are left in modern day New Zealand, kept poor, whether working, or worse still, even poorer if unable to find work, or unable to work altogether.

It took MSD well over two and a half years to respond in a more qualified manner to these OIA requests, seeking simple, clear and honest answers on how benefit rates would be set, and whether basic living costs would possibly be considered to be reflected in the form of components of the base or main benefits. Even then, they avoided to offer more clarity. And as so often, the Ombudsmen did not appear to be too interested in getting more appropriate responses from MSD. Worse still, the complaint made already in late Nov. 2015, was left lying around for over two years.

In any case, whatever considerations may be made, whatever advice the Ministry may give to the government, in the end it is the government of the day in New Zealand that sets the social security benefit rates at will, as it sees fit, based on advice received and its own judgment, as explained above.

**Quest for Justice**

23 May 2018

Link to online version of this blog post or report: