



28 JUN 2016

Lance-Desmond Lavery  
[fyi-request-4001-9732c3fd@requests.fyi.org.nz](mailto:fyi-request-4001-9732c3fd@requests.fyi.org.nz)

Dear Mr Lavery

Thank you for your email of 16 May 2016 to the Chief Executive of the Ministry of Social Development, requesting information from Child, Youth and Family (CYF).

The Chief Executive has asked me to respond to you on his behalf.

I am responding to each question in turn.

**1. The legal (not the Oxford English) definition of the terms, "Ex Gratia" and "Compensation" (for damages) as they are applied by CYF legally.**

The Ministry is bound by the Cabinet Circular CO (15) 4 which sets out the definition of ex gratia and settlement payments. The circular states:

"An ex gratia payment is a payment made without the giver recognising any liability or legal obligation; the payment is made out of goodwill or a sense of moral obligation."

A settlement payment is compensation or damages in settlement of a claim.

**2. Information regarding any external entities that can hear claims, for example, the Human Rights Review Tribunal.**

The external entities that hear claims are the District or High Courts. A formal Statement of Claim would need to be filed with the relevant court and most people who wish to have their claim heard by the Court engage a lawyer, although it is not mandatory.

The Human Rights Review Tribunal deals with claims relating to breaches of the Human Rights Act 1993, Privacy Act 1993 and Health and Disability Commissioner Act 1994. Claims may relate to discrimination, sexual harassment and racial harassment, privacy principles and the Code of Health and Disability Services Consumers' Rights.

For further information on whether a claim may be considered by the Human Rights Review Tribunal see [www.justice.govt.nz/tribunals/human-rights-review-tribunal](http://www.justice.govt.nz/tribunals/human-rights-review-tribunal).

**How will "historical" Ex Gratia and Compensation claims be conducted post April 2017 after the organisation commonly referred to as CYF has been dissolved?**

The Ministry defines historic claims as claims relating to time in care up to 31 December 1992. Claims for time in care from 1993 to 2007 are classed as contemporary claims but follow the same claims process as historic claims. Claims about care after 2007 are made to CYF.

The Ministry will still be committed to resolving claims whatever the organisational structure will be. No changes, if any, to how historic or current claims will be assessed have been

decided and any such changes will be publicised on the following website:  
[www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/cyf-historic-claims.html](http://www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/cyf-historic-claims.html).

**3. Will CYF still perform ALL legally required duties according to the provisions of the Acts of Parliament that govern the organisation prior to April 2017?**

All of the required legislated duties will be performed whatever the organisational changes.

**4. The procedure one is required to conduct in order to undertake an Ex Gratia and/or Compensation claim against the department of Child, Youth and Family. Please be as specific and clear as possible when providing this information in order to avoid confusion.**

A person has two ways to make a claim against Child, Youth and Family and its predecessors if they are making a claim about their time in care prior to 2007.

Firstly, a person may contact the Ministry's historic claims team directly by telephone, email or in writing. After some initial information is taken, arrangements will be made for two senior social work advisors to meet with the person to provide an opportunity to talk about the concerns in detail. Their claim will then go into the queue for it to be allocated to a senior advisor for investigation and assessment.

Once the case assessment has been completed, the senior advisor will arrange to have another detailed conversation with the claimant face to face or over the phone to report the findings of the assessment in detail. If the person hasn't received the care they should have, the Ministry will offer an apology and discuss what can be done to put things right. If appropriate, an ex-gratia or settlement offer will be made. The Ministry provides \$250 for the claimant to consult with a lawyer about the offer if they wish.

The second avenue is to file a civil claim with the District or High Courts. This is usually done through a lawyer. Once the claim has been allocated to a senior advisor it will be investigated and assessed in the same way as described above. A settlement offer will then be made via the person's lawyer. The person's lawyer will provide advice to the claimant on whether the offer is a fair one. Where parties are unable to reach settlement, the claim will progress through the court and possibly go to trial. Legal Aid is available for claimants who meet the criteria.

For further information on historic and contemporary claims please go to the following link:  
[www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/cyf-historic-claims.html](http://www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/cyf-historic-claims.html).

Additional information is available at:  
[www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/historic-claims-faqs.html](http://www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/historic-claims-faqs.html).

Information about CYF's formal complaints process can be obtained from the following link:  
[www.cyf.govt.nz/about-us/our-service-commitment/](http://www.cyf.govt.nz/about-us/our-service-commitment/).

Yours sincerely



PP Rachel Sutherland  
General Manager  
Ministerial and Executive Services