

Our ref 542425 (Complaint ground: 562381, 562384)
Contact Paba Jayalath
17 September 2022



Callum and Victoria Turnbull

Dear Mr and Mrs Turnbull

Complaints against Ministry of Education

I am writing on behalf of Chief Ombudsman Peter Boshier, regarding your complaints of 26 March 2021 and 15 September 2021 about the Ministry of Education (the Ministry), relating respectively to seclusion and the use of physical restraints.

It seems at the outset that you may not have raised your concerns regarding the under-reporting of the use of physical restraints—in relation to a Newsroom article of 9 September 2021¹—with the Ministry at a senior level. As you know, it is expected that complainants take this step before the Chief Ombudsman would consider investigating, as this may result in resolution or a satisfactory explanation. It is open to you to write to this Office if you remain concerned once the Ministry has responded, and explain why that is.

Secondly, it appears that investigation of your complaint of 26 March 2021 may not be necessary, pursuant to section 17(1)(f)(i) of the Ombudsmen Act 1975 (OA). I have set out the relevant details below.

Complaint of 26 March 2021

Your complaint was about the Ministry's handling of certain complaints about seclusion.

On 11 November 2020, you asked the Ministry for information relating to a report of complaints of unlawful work experience and seclusion made against Ruru.² I understand that the latter aspect related to three students being put in a separate room for non-participation in sports.

A response to your Official Information Act 1982 (OIA) request was provided on 21 January 2021, outlining the process that was followed in addressing the relevant complaints, and the steps the Ministry had taken in its review of the matter.³ Ultimately, the Ministry concluded the appropriate next step was the involvement of an independent facilitator. This took place in August 2020, and resulted in the complaints being withdrawn.

¹ The article is available [here](#).

² I understand that that you were referring to Stuff's article of 29 June 2020, available [here](#).

³ The Chief Ombudsman investigated your complaint about the Ministry's decision on this OIA request earlier this year – our ref: 542425 (Complaint ground: 545611).

On 11 February 2021, you wrote to Chief Executive Iona Holsted about your concern that the Ministry had not completed an investigation into the allegations.

On 16 March 2021, Ms Holsted advised she was satisfied the process the Ministry had followed in responding to the complaints in question was sound.

You state in your letter of 26 March 2021 that you do not accept that a sound process was followed.⁴

Comment

As you know, Ombudsmen have authority to consider complaints about the acts and decisions of government agencies, including the Ministry. However, an Ombudsman may decline to investigate a complaint where, following preliminary inquiries, that is considered unnecessary.

Before commencing an investigation, the Ombudsman needs to identify a basis upon which an agency's decision could be open to criticism on administrative grounds. The information to hand should suggest either that there is the possibility of a justifiable grievance, or that investigation may identify the possibility of a justifiable grievance.

In your case, and having made preliminary inquiries of the Ministry, it appears that your concerns may not be reflected in the evidence.

It seems that the basis for your concerns is the view that *'it is unjust that seclusion complaints can be secretly facilitated negotiations and kept a private matter between a school and parents'*, and what you consider to be a difference in the information provided to you about the role of the third party the Ministry contracted.

With reference to the former aspect, the following extract from Mr Boshier's letter of 15 June 2022 regarding his investigation of your OIA complaint is relevant:

You are concerned that as a result of the facilitation process, the 'outcomes [will] never see the light of day', citing Chief Executive Iona Holsted's advice in her letter of 16 March 2021 that 'as this is a private matter between the parents and the school, we cannot comment further'. To clarify, and having reviewed the Report, neither the Ministry nor the complainants are prevented from pursuing the matter of seclusion further. In fact, you were advised that the Ministry had done this, in advising the Education Review Office of the facilitation process that had taken place, and the existence of the Report. ... While you consider that a confidential facilitation process is not appropriate for complaints about seclusion, in my view, there is a public interest in such alternative dispute resolution processes.

⁴ I note that you first complained to this Office about this matter on 2 February 2021, at which point it was not clear whether you had raised concerns with the Chief Executive in the first instance.

With reference to the latter, and having reviewed the relevant report, I can advise that the Ministry contracted two independent third parties in relation to the complaints—a facilitator,⁵ and subsequently, a solicitor.⁶

It therefore seems that your concerns may not be reflected in the evidence.

I also note that the nature of a complainant's personal interest in the matter becomes relevant if they are not directly affected by the administrative action at issue. I refer to section 17(1)(e) of the OA, which provides the Ombudsman with the discretion to refuse to investigate complaints if a complainant does not have a sufficient personal interest in the subject matter of the complaint.⁷

I acknowledge that your interest in the Ministry's handling of the complaints in question is informed by your family's experience with Ruru. However, taking a greater interest in an issue does not necessarily mean that you have a greater personal interest than the general public. It does not seem that your prior complaints against Ruru and the Ministry can be the basis for a greater personal interest in the Ministry's handling of these specific complaints.

Other matters

You have asked for a systemic investigation of the Ministry's handling of complaints about seclusion, and the processes in question. However, the Chief Ombudsman takes a rigorous approach in deciding when and how to commit to wider or systemic investigations, and your concerns about the Ministry's complaint-handling in this instance do not seem to be reflected in the evidence. Accordingly, Mr Boshier is unlikely to carry out the investigation requested.

Having carefully reviewed all the circumstances of this case, it appears that for the reasons discussed above, an investigation of your complaint of 26 March 2021 is unnecessary. However, if you wish to make any further comments, please respond **by 31 October 2022**. If I have not heard from you by that date, the complaint will be closed.

Yours sincerely



Tinus Schutte
Manager—Investigations and Resolution, Auckland

⁵ As advised in the Ministry's OIA response of 21 January 2021.

⁶ As advised in Ms Holsted's letter of 16 March 2021.

⁷ Section 17 is available [here](#).



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Our ref: OIA 18 – 57

7 November 2019

Callum and Victoria Turnbull

Dear Callum and Victoria

Formal Complaint against Jeremy France

I refer to your email dated 15 October 2019 in relation to the above.

In your letter of 21 August 2019 to Julie Burford, Acting Deputy Chief Executive Corporate Services, you requested that the 2016 Review Report of Ruru Specialist School be withdrawn on the basis that it is inaccurate.

- I have looked at all the information related to your request and discussed your complaint with Mr France. He has clarified that his letter of 14 October 2019 to you is focused on your request to withdraw the 2016 Review Report of the school. It does not directly or impliedly excuse the principal of the school or the board for their omissions.

I have decided to bring forward the next ERO review of Ruru Specialist School. This review will include an assessment of the extent to which Ruru Specialist School is providing a safe emotional and physical environment for students and how well the Ministry recommendations are being sustained through regular self review. I would like to thank you for raising your concerns about the school.

Yours sincerely

Nicholas Pole
Chief Executive and Chief Review Officer