



# Petition 2008/121 of Graeme Axford

Report of the Social Services Committee

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## Petition 2008/121 of Graeme Axford

### **Recommendation**

The Social Services Committee has considered Petition 2008/121 of Graeme Axford, and recommends to the Government that it

- investigate establishing an independent complaints mechanism for Child, Youth and Family which would be separate from the Ministry of Social Development
  - investigate establishing a mechanism to monitor complainants' satisfaction with the complaints process in the Ministry of Social Development and Child, Youth and Family.
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### **Introduction**

We have received and considered Petition 2008/121 of Graeme Axford requesting that the House of Representatives establish an independent complaints system for Child, Youth and Family, separate from the Ministry of Social Development.

At present, when Child, Youth and Family receives a complaint, it is considered at the site office to which it relates, but by a person who has not been directly involved in the case. If the complaint is not resolved at this level it is referred to senior regional staff for review and resolution. If the complainant is still not satisfied, he or she can ask for the complaint to be reviewed by the Chief Executive's Advisory Panel. The panel reviews the complaint and makes recommendations to the chief executive. We were told that to date every recommendation from the panel has been accepted. If the complainant does not accept the panel's view, he or she can complain to a number of external bodies: the Ombudsman, the Children's Commissioner, or the Social Workers Registration Board.

### **Independent complaints mechanism**

The members of the Chief Executive's Advisory Panel are respected members of the community, not employees of the ministry. The panel can determine its own procedure and jurisdiction, and is an impartial body administered outside of Child, Youth and Family. It appears, then, that many mechanisms for independent review are already operating, and we believe that there would not be much more work or cost involved to render the panel independent of the ministry.

In our view, establishing a completely independent complaints mechanism would improve the external perception of the review process. As the advisory panel is already impartial, we believe it would be advantageous to demonstrate its independence by separating it from the ministry. We heard that the ministry would be open to doing so, and we recommend that the Government investigate taking up this option.

### **Complainants' satisfaction**

We heard that last year 532 complaints were received by Child, Youth and Family, of which only 34 proceeded to the advisory panel. However, we are aware that people may choose

not to pursue complaints for many reasons, and that withdrawal from the process does not necessarily indicate satisfaction with the resolution. For example, a complainant may abandon the process because he or she finds the complaints process too challenging. We acknowledge that currently, people whose complaints reach the Chief Executive's Advisory Panel have to be persistent to resolve their issues. We were therefore concerned to hear that the ministry does not monitor complainants' ultimate satisfaction with the process, and believe a mechanism for doing so should be investigated.

## **Appendix A**

### **Committee procedure**

The petition was referred to us on 16 March 2011. We received written submissions from the petitioner and the Ministry of Social Development. We heard evidence from the petitioner on 3 August 2011 and from the Ministry of Social Development on 7 September 2011.

### **Committee members**

Katrina Shanks (Chairperson)  
Jacinda Ardern  
Chester Borrows  
Tim Macindoe  
Todd McClay  
Dr Rajen Prasad  
Jami-Lee Ross  
Su'a William Sio  
Metiria Turei

## Appendix B

### Corrected transcript of hearing of evidence 3 August 2011

#### Members

Katrina Shanks (Chairperson)  
Todd McClay  
Jacinda Ardern  
Chester Borrows  
Tim Macindoe  
Dr Rajen Prasad  
Jami-Lee Ross  
Su'a William Sio

#### Witnesses

Graeme Axford  
Sam Bailey, Barrister, Equity Law  
Evgeny Orlov, Barrister, Equity Law

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Shanks            Good morning, I'm Katrina Shanks. I'm chair of the select committee. Thank you for joining us today. [Introductions]. Thank you for joining us today and taking the time to come and give your evidence. I just need to read you what private evidence means for this select committee; I have a standard form that I have to read you.

Leave has been given to hear this evidence in private. You may not disclose it outside this room until the item of business is reported to the House under Standing Order 214. Premature disclosure of private evidence can lead to a finding of contempt under Standing Order 401. Your evidence will become publicly available when the committee reports to the House— Standing Order 214. This hearing of evidence is being recorded and transcribed, and the corrected transcript will also become publicly available at the same time—Standing Order 214.

If your evidence contains material that may seriously damage a person's reputation and this material cannot be returned, resubmitted, or expunged, it will be made available to that person, who will also have a right of reply— Standing Orders 231, 232, 233, and 234.

This hearing of evidence relates to your petition, which requests the establishment of an independent complaints system for Child, Youth and Family separate from the Ministry of Social Development. While you may discuss individual cases to the degree that they illustrate the issues that support your petition, we ask you to refrain from identifying any

individuals, by name or otherwise, involved in these cases. Please keep your evidence focused on the issues and not individuals.

We are very keen to hear what you've got to say this morning. We've got half an hour from now, so the floor is yours. Obviously we would like to have the opportunity to ask you questions at the end, so please allow us some time to do that if you can. We're all yours.

Axford Thank you for having me here today. To my left here I've got Evgeny Orlov—is that how you say your name?

Orlov Yes.

Axford Who's a lawyer based in Auckland, who's very kindly given up his time and come voluntarily to the committee because he deals with Child, Youth and Family a lot. And because I have a reading disability, it's quicker for Evgeny to read the stuff out. And to my right here I have Sam Bailey, who's an independent consultant on issues with Child, Youth and Family. So if Evgeny wouldn't mind starting.

Shanks I don't want to stop you, but we have read all your submissions, so—

Axford This is new. We've supplied the clerk with copies of—we've got 14 copies.

Shanks OK, so the clerk has to take them first and do his stuff with them before we can receive them as documents. There's a bit of a process we have to go through.

Axford Well, while he's doing that, I shall—have you got my last email I sent to you about the chief executive advisory panel?

Shanks Submission 7 that we received yesterday?

Axford Yes. I guess, to me that's proof that how unaccountable Child, Youth and Family are, because I'm trying to get back to the chief executive advisory panel, and I know for a fact that there's other families trying to get back to the chief executive advisory panel, but what tends to happen is that Child, Youth and Family refuse to investigate the complaint properly, and until they've had time to consider it, you can't go back to the chief executive advisory panel, and that's one of our arguments about the need for an independent complaints authority outside of them who can actually limit things and, if need be, go and do the report themselves rather than rely on Child, Youth and Family's internal complaints system. Because it's just honestly not working.

Just to cut a long story short, I became a social worker and I was trained by—many of the people who trained used to spend a minimum of 25 years within Child, Youth and Family, and they've read a lot of the documents that I've handed in to you, and they actually agree that it's right and that things finally do need to change because for the last 20-plus years, Child,

Youth and Family has been reasonably unaccountably. I mean, we've got the social workers code of conduct, we've got the State Services standards of integrity. The issue isn't that the tools aren't there; the issue is making Child, Youth and Family compliant to them. I mean, when you read things like the Social Workers Registration Board code of conduct or the Aotearoa Social Workers code of ethics, it's very clear that they've got very good guidelines, but the issues we have is the enforcement of them.

Shanks Can we ask some questions soon? I didn't mean to stop you, but we have got lots of questions we'd like to ask. Graeme, if you don't mind me asking you some questions. Even based off the example you just gave then, a lot of the evidence that you've given us has talked about holding social workers to account for the decisions that they were making. So in terms of, for example, the example you just gave, do you have concerns that social workers aren't held accountable to CYFS' own procedures that are in place, or that social workers aren't held accountable to what you'd expect them to be ethically to the board, to their own profession.

Axford I would say both because CYFS policy is supposed to line up with what social workers are meant to be doing, and if you read their code of ethics and the Child, Youth and Family policy and procedure, it does line up. But where the issue is, is—we get into trouble with things like what's in the best interests of the child. As Evgeny has pointed out, that's so open. The issue we have is that trying to get specifics like when they uplift a child you'll find the affidavit's quite often changed that they file in the Family Court—the reasons for the initial uplift. The problem is that—what I try to tell people is that if Child, Youth and Family could get that sorted out, if they could actually abide by their own policy and procedures, which is the first thing, and do things in real time rather than lag—because it takes a very long time to get a complaint in. And then what Child, Youth and Family will do is say: "That's before the court; we can't talk to you about it."

The issue we have is—a lot of people criticise the Family Court, and I can understand the criticism, but the judge is only as good as the information that he's given, and if Child, Youth and Family give them bad information or biased information, they make bad decisions. So often we want Child, Youth and Family—like, if you go to the Children's Commissioner, they'll say: "We can't do anything about it, because that case is before the court." Our issue is the evidence going before the court. If we can get that addressed—

Shanks So you're saying that CYFS policies and procedures do align with the social workers' own professional body, but they're not followed in practice.

Axford Yes, that's basically what we are saying. I mean, if you read all CYFS' paraphernalia, and even if you look at the CYFS Act itself, they're actually very well-written documents, but the issue we have is the fact they're actually not being followed.

- Shanks            So if you've got an issue with a social worker, you've got two ways to address it. The first one would be to go to the Social Workers Registration Board and put a complaint with them against the ethics of that social worker, and the second one would be to go to the CE panel to say they were unethical in their behaviour. Is that right, or is that wrong? I'm just trying to get the boundaries of what we're—
- Axford            Yes, if they're registered. The issue we've got with the Social Workers Registration Board is, one, they're underfunded, and, two, they really rely on CYFS to first of all do their initial report into the complaint. So what happens—
- Shanks            You just raised a really important point, which I wasn't aware of. So you're saying that if you go to the Social Workers Registration Board with a complaint, they will go to CYFS to investigate it and they won't independently investigate it themselves.
- Axford            They will rely on CYFS to bring that information forward and go off the CYFS report.
- Shanks            So they do no independent investigation?
- Axford            Not that I'm aware of, no. And if Child, Youth and Family refuse to do their report, then the Social Workers Registration Board is actually damned useless, because they can't actually off their own bat go into Child, Youth and Family and say: "Look, we want to see these case files; we want to see this; and we want to see that." Child, Youth and Family are very good at hiding behind the Privacy Act to just—because, for example, I got my file, and I've got no children in their care. Two hundred and forty-nine pages. Out of that, 140 of them are blanked out. It's like if people try to defend themselves against Child, Youth and Family—and this often happens, because they can't get legal aid—you'll request a file, and there'll be so much blanked out of it you've got no idea actually what it is you're fighting against.
- Prasad            I'm going to come to your fundamental point, because I think the Social Workers Registration Board is \_\_\_\_\_. Your fundamental point is—correct me; make sure I've got it right and let's talk about your thinking in this area—that here is an organisation with enormous powers affecting the lives of our children and families.
- Axford            Yes.
- Prasad            How they do their business is not open to independent scrutiny.
- Axford            Correct.
- Prasad            And the present system is in-house, and essentially does not satisfy you that there is independent scrutiny—

- Axford Correct.
- Prasad —when things go wrong. That’s your primary point.
- Axford That is.
- Prasad And essentially you’re saying that the chief executive’s advisory panel is not doing that, the in-house review by the \_\_\_\_\_ themselves is not doing that, the Children’s Commissioner is far too busy to do it, the Social Workers Registration Board does not have a role in this, and so nobody has the role. That’s your primary point.
- Axford Yes.
- Prasad And you’re encouraging us to think about intending to investigate that as a point of view, and then to see what we might do about it.
- Axford Correct. And one of the issues with the Children’s Commissioner—and Sue Bradford always told me when I wrote to her to go and see the Children’s Commissioner—the Children’s Commissioner oversee how Child, Youth and Family apply the Act, not Child, Youth and Family itself. They can’t look into how social workers behave, and neither can the Family Court. I mean, for example, some of the affidavits I’ve taken have been very poorly transcribed and supplied to the court in what we consider to be an extremely inaccurate version of events, but the problem is you actually have no way to address that issue. That’s part of the problem. There is nowhere along the way that the OCC, the Social Workers Registration Board, the CE panel—there is absolutely nowhere you can go to get a complaint looked at outside of Child, Youth and Family. It’s impossible.
- Shanks My understanding is that all CYFS are registered social workers now. But we can follow—
- Prasad I think the fact is they have the largest number of trained social workers, but it’s not 100 percent, and they have some mechanisms to make up the shortfall.
- McClay Just going back to what you were talking about in some of the examples you gave, and probably I need to provide a bit of balance before I come on to some questions. Probably the reason that CYFS have been involved with so many people who have harm done to them, do harm to themselves, end up in prison and so on is because of some of their background also. So I guess the question is, it’s your belief that the reasons some of these people end up in prison or harming themselves or harming others is because of their involvement in CYFS, or is it actually that CYFS are there because there’ve been some challenges already?
- I give the example of pretty much every house fire in New Zealand, there’s been a fireman there because it’s their job to turn up when there’s a house fire. What I would be concerned with is if the firemen were turning up

before the fire starts, or turns up when the house is on fire and does nothing about it. So just to get a sense from you of whether you think that CYFS are the problem here, or CYFS are having to deal with some of the most difficult situations of young people and families in New Zealand.

Axford See, the issue is that we want people in New Zealand to be able to think of Child, Youth and Family as part of a solution, not another problem. And to us that is the problem: that people—I know a lot of people who honestly would not ring CYFS. That terrifies me in one way, because I think if they think ringing CYFS creates a bigger problem—and believe me, in some cases it does; it's horrific to see what people go through. The other issue is that we've got this lovely Act that talks about neglect and things like that. What happens when CYFS neglect them? It's ironic that I've seen children taken off reasonably good parents who needed support more than anything, to be put in a CYFS family home to be even more neglected in the family home and even worse treated by them than what they would have been in their own family, and I just don't get that. And there is absolutely nowhere you can go to have that addressed.

McClay Graeme, I wanted to come to the independent complaints authority, because I think that that deserves some more talking about, aside from just the time we have today. Can you, in your experience, or in your opinion, tell me—so there is a system that's set up there. I understand what you're saying about how the people that sit on it are appointed. Is it the case or your feeling that for complaints to get to that level of the system is too difficult? In your experience does it happen as often as it should? And having an independent complaints authority, how would you set up some checks and balances so that everyone—so everybody that has their child taken off them would be unhappy—everybody.

Axford Yes, correct.

McClay In some cases—and, I would hope, in most cases—there's good reason, but it's not a debate around that today. All I'm saying is everybody will be unhappy, because we're dealing with some of the worst cases of the treatment of children in this country. So how would you ensure that it doesn't just become another process where people who are going to be unhappy anyway just fill up the system with their complaint, as opposed to making sure it focuses on what's best for the child?

Axford That's a good question, and I've thought about this a lot. One of the ways—simple ways—I see it happening is when you've got things like the Care and Protection Resource Panel, for example, I can see them as being a good avenue for people to go to if they have an issue with Child, Youth and Family. Now, they'd have to be restructured, because the local manager appoints and runs the panel; it just doesn't work. But the thing is the Care and Protection Resource Panel would already have a reasonable idea of why a child was uplifted. So in theory, if you had a complaint against Child, Youth and Family, they've already got the background knowledge, and they

would then be able to—you've got to use a certain amount of common sense. That's where I could see part of the solution, anyway, is with the care and protection panels. And if they work locally and they're in the community and they know the case already, if you've got a genuine complaint against a social worker, then they should be able to judge for themselves whether that's just you being unhappy full stop, or whether it's a valid complaint.

McClay So the biggest point in this is the independent part.

Axford Yes, definitely. It's got to be, because Child, Youth and Family—I'll give you an example. Let's say I ask Sam here what the time is, and he sends me back an email and says "The sky is blue.", and his boss comes to him and says: "Sam, did you answer Graeme?"; "Oh, yes, I answered Graeme. I acknowledged his email; he's got a reply." The fact that that had nothing to do with what I wanted to know—and this happens all the time. The amount of times I've written to managers; "We acknowledge your letter." Then I'll get another one back: "We have responded to your concerns." Well, they haven't. They have responded, they have acknowledged, but nothing around the actual complaint itself. And then they'll close ranks and say: "It's before the court, and we can't talk about that." There's just a wide range of excuses. So we need this panel to be able to, right from the time a child's uplifted, even while it's going through court, to be able to investigate complaints.

Now, I'm not saying that they should double-guess the court; what I'm saying is if there's a false affidavit put in, you then have to engage a lawyer in the Family Court, if you can get legal aid, to argue with CYFS over it. You can't actually go to CYFS and say: "Well, actually this is wrong." I mean, the amount of wrong information, according to one file that I got—now I've got two children. Well, it must have been a quick affair because I certainly can't remember it happening, and I'm still waiting to find out where the children are and how much in child support I owe.

I mean, they get it so wrong. It's so blatantly wrong. Now, I can understand that people make mistakes, and that's fine. The problem we have is that they refuse to then go back and look at them. As Sam quite often tells me here, they've got no reverse gear. And there's one file we know of where the file is so badly corrupted—and that's their words; they've put a note on the file that the file is corrupted, because there's just too many mistakes in it to go through. And the thing is if we got on to that earlier, we might have been able to stop it in its tracks. It just seems things escalate and then they just blow out of all proportion.

Borrows I guess I'd like to—it's more of a concluding point, really, but I think that the points you are making yourself are very good points, and I'm very impressed by your submission. I don't think that it has helped your submission before this committee to actually have the assistance of a barrister here, because he wasn't speaking to your point, and a number of

the very emotive points that you have made don't actually assist in this situation; it's a different topic.

And a number of us around this table have had ongoing experience in the positive and the negative with CYFS. As a police officer I assisted in the removal of many children, and for you to make statements along the lines of: "CYFS just don't care about children." is absolutely ridiculous. And for a barrister not to acknowledge then that the demographic of those people who will engage with CYFS are exactly the same sort of people who will negatively be represented or overrepresented in stats around law and order, health and education, and welfare in the future, but just to make those blanket statements, does not help your friend, who you've come all the way from Auckland to support. And you weren't acting as a support person; you were acting as a submitter. And that wasn't the reason for you being here. And I just go back to you, Mr Axford, and say the submissions that you have made, the points you have made in respect of an independent complaints authority acting to scrutinise the activities of CYFS workers is very well made. That's all I wanted to say.

Macindoe      Actually, you've touched on a similar concern that I had. I mean, I think we are looking very carefully at what you have put before us. We obviously need to deal with it sensitively. I am concerned; I feel that much of what we thought we were going to be discussing over the last half hour has actually been put to one side.

Orlov            I wanted to answer your point, because in many ways I don't agree with you. The tragedies I have shown are actual cases of human tragedies that have been used by people who have not cared in the CYFS system. I'm not saying that CYFS get it wrong all the time; what I'm saying is: "Is the cure worse than the disease?". That is why an independent committee is needed, to ensure that these tragedies do not occur.

Borrows        OK, but you spent a long time making that point. You didn't make it particularly well. It wasn't necessarily in support of the very narrow point that Mr Axford was making, and that is the need for an independent authority, and all those cases are known to us, they're in the public realm, and on this committee we're probably more tangibly aware than most. So we're just wasting more time—Mr Axford's time—now.

Ross            I've accepted what Mr Axford said, and it is a shame that a lot of his time was taken up with some less than relevant material.

Prasad          I also wanted to \_\_\_\_\_ there's no point, Graeme, in demonising Child, Youth and Family. For as many negative cases you want to bring—anybody wants to bring—there will be as many if not more, much more, positive cases. So acknowledge that. And the second thing is the proof is in the eating. In the present system there's not even a small number of complaints that have gone there, but I do hear also what you're saying in my other roles, and in this role, of people who ask me some fundamental questions.

And I'm not satisfied that we'll get the answers by using the present system. So your arguments are very well written, and your submissions are \_\_\_\_\_, and you have anticipated also. But, you know, why do we have it within the organisation? Where is the sense of independence in there as well?

Because if somebody was unhappy with something the police did, there's a whole authority set up to go and investigate that, and nobody questions that. In the mental health area, one goes to the Mental Health Commission and they can write as many reports as they like—and they do—and the commissioner does actually hold hospitals to account. So I think there's a lot of good history, and the points you made were very, very good points. And your submission exercised my mind. It's an area I know something about, as you know, and I want to see, when I ask the questions, as we proceed with this inquiry, say, well, what justifies the present system, and what are the alternatives. So that's what I would add, \_\_\_\_\_.

Ardern I'd just wanted to thank you for making your—you've put a huge amount of work into your submission. I guess for me the criteria on things like this is where there are vulnerable people involved and where the State has the ability to exercise a huge amount of power, I think those are criteria for us to certainly ensure that people can maintain some faith in the system, and part of that is having an independent body who are able to address if they feel like either of those powers have been misused. And for me the best example obviously is the model we have with the police. It's not to say I haven't heard complaints about the way the Police Complaints Authority has conducted themselves, but at least that mechanism exists. So I'm certainly grateful that you've raised the issue, and I think it's something that I would support. \_\_\_\_\_ some of the other statements that have been made by the committee.

Sio I've got a case that I'm dealing with that is really causing me to feel like you are feeling or have been feeling, and that's why I've been quite adamant about this committee considering the proposal that's been put forward. Because it's unbelievable, when I listened to the lawyer there about the cases that he's outlined, it's just unbelievable, and prior to taking up this case I would have said to you immediately: "That's a lot of rubbish; I don't believe that." But it's unbelievable when a Government department is deliberately—not a Government department; individuals that I'm dealing with—are deliberately acting on something that I just can't fathom that they have the right to do at the moment. To make it worse, they're not responding to my calls on behalf of my constituent. So I'm going to continue with this case, but I think it's timely that Mr Axford has raised his concern about establishing an independent complaints authority.

Borrows I agree.

Axford And a lot of social workers actually want this themselves, because they're sick of being villainised. I mean, I would go and work for CYFS tomorrow,

and that's the honest truth. I just want them to be seen as part of the solution, and I think we're a long way off that happening.

Orlov And thank you for your words, but there is an issue here which many of you may think I'm trying to perhaps use the word demonise, but the issue is really that the bureaucracy is no longer accountable to Parliament. You will be asking CYFS questions that they simply will not answer, because the more cases that come through their door, the more funding they get, the more power they get, the more people they hire, and the more the system gets out of control. And there's no one looking at the quality of this system, and that's the problem. We have lost control of some of these bureaucratic institutions, to the point where they really don't care what they say or what they do, because they know no one will hold them to account. Their own people will protect them.

Prasad That's a pretty cynical approach, Mr Orlov.

Orlov It's not cynical; it's an approach of—I've seen thousands of cases—

Prasad Have the cases that have had nothing but gold-edged services come to you? Would they come to you?

Orlov The problem is that considering that a lot of people come to me from all over the country begging me to take the cases on and telling horror stories that are just simply unfathomable, I would not have believed it when I first started, but having seen hundreds and read thousands of reports from people all over the country saying the same thing—the so-called social workers are not worried about the children; they're worried about getting the court case through and getting the child into the system. That's all they care about, and that's the problem.

Shanks Mr Axford, I think this has been a good meeting and a good hearing for you. I hope you feel like you've been heard today.

Axford Yes.

Shanks Is there anything you'd like to close with yourself?

Axford With the issue of mandatory registration, as you would have seen through my documents, I honestly don't think that is going to resolve social workers being accountable. That's just going to be the simple truth of it, because they close ranks. There's a lot of things that happen that the Social Workers Registration Board just can't look into, and I think—does Sam want to say something in closing?

Bailey I'm 100 percent behind what Graeme's wanting to establish, or getting the Government to establish, in so much as having that independent review authority. One of the most important things that you may not be aware of, whereas I've been involved in family group conferences and I've seen it firsthand, as the honourable member has seen himself, is that they can

come in and they can take your child faster than you can imagine. But when it's been presented to them that they have made—and I have cases where it is clear they have made a mistake. And I do not fault them for kicking that door in fast.

I do not fault them for protecting a child. It's what they're established to do. But when they've seen that they've made a mistake, instead of returning the child with the speed at which they stole the child, they have no accountability—none whatsoever. And it is appalling that this country has allowed this to happen or that a Government allows it to continue to happen. I have a child that I've seen. They've taken these two twins, they've taken them away, they've found out they made a mistake, they agreed they made a mistake, but they would not return the twins, because they've been away from the mother so long that, and I quote: "Lawyer for child turned to a new mother of 18-month-old twins and said 'They've been away from you for three months now. They would have forgotten you. So we need to slowly bring them back into your life and we will let you see them for an hour a week until we can get them used to you again.'" And then at the end of that asking the social worker: "How many hours did you take to integrate the child into the approved carer's hands?", and I got kicked out of the meeting for asking that question. That social worker cannot be held to account. And what Graeme is asking for is nothing short of common sense. Apologies for my emotion.

McClay I have a question, and I accept fully what you've said. Are there cases where they act too slowly as well, they don't go in as quickly as they should? So I guess my question is—you have much more experience hands-on, probably, than we will—how do you get that framework? How do you get those rules and guidelines right so it's more than or less than just the individual who's charged with thinking about the care of that child making that decision.

Axford Most of the time we've found when there've been mistakes made it's generally made because social workers are under pressure or under-resourced, and it's ironic that an agency who deals with abuse can be so abusive towards its staff in the fact that they're overworked. We had a staff who didn't understand the assessment system, so they ticked the boxes, and then that got logged into the computer, and then that person's now living in Australia, and someone will look: "Oh, all the boxes are ticked." So it's just a matter of—I do feel extremely sorry for a lot of good CYFS staff.

I've got friends who work within CYFS; I know what a—I've seen them upset. I've seen them have nervous breakdowns because of the pressure of the organisation. And they said that's one interesting thing about; it is that they feel sometimes their own management actually doesn't listen to them, that you can only have 9.5 staff in this office, and forget it. As they said, they are a very reactive organisation, so if suddenly, like in Greymouth were I come from, they have three child abuse cases at once, that ties up most of their staff in that office, which means that the stuff gets late filed in court, or gets filed incorrectly, or someone new from Christchurch is brought over

temporarily to get all the paperwork in order who's got no background knowledge of the case at all, because that social worker is elsewhere dealing with another case. And so a lot of it is systemic issues, and that's why I think an independent complaints authority—it would be handy too if the staff were able to avail themselves of that, as well.

Shanks Thank you very much. As you would have noticed, we're really interested in what you've got to say. We're going to go through a process now and determine other evidence that we might seek to look at for this petition. We will do a report back to Parliament.

Axford When's that likely to be?

Shanks It will depend on how far we go with wanting to seek other submissions as well to form an opinion for a report back to Parliament. But as you can see, we're passionate about it as well, and we want to look after our most vulnerable children in society as well. So we're all on the same page about wanting the best outcomes, and we've heard—we've absolutely heard—what you've said. You don't have to email us any more, because we've got a really clear message from you today.

Axford That's good. I'm not going to give up.

Shanks Thank you for being so passionate. Thank you for caring about the kids in our society, because people have to stand up for them, and you've done a very good job here today. So go away, and you've put your very best foot forward for us. So we've got a lot to talk about. So thank you very much for caring.

Axford Yes, and thank you for taking the time. It's much appreciated.

**conclusion of evidence**

## Appendix C

### Corrected transcript of hearing of evidence 7 September 2011

#### Members

Katrina Shanks (Chairperson)  
Jacinda Ardern  
Chester Borrows  
Tim Macindoe  
Dr Rajen Prasad  
Jamie-Lee Ross  
Su'a William Sio  
Jonathan Young

#### Witnesses

##### *Ministry of Social Development*

Iona Holsted, Deputy Chief Executive, Corporate and Governance  
Marama Wiki, General Manager, Operations, Child, Youth and Family  
Bryn Gandy, General Manager, Client Advocacy and Review

- 
- Holsted I am Iona Holsted, from Ministry of Social Development. On my left is Marama Wiki. She is the General Manager, Operations, Child, Youth and Family. On my right is Bryn Gandy, and he is a General Manager for the care, claims, and resolution service, which is housed within the corporate and governance bit of the Ministry of Social Development.
- Shanks So who is sitting behind you?
- Holsted Al Witcombe. He is a manager in ministerial and executive services, also in corporate and governance.
- Shanks OK, as you'll be aware, this is private evidence and we are recording and transcribing this. I just have to inform you of what we are doing. The evidence will become publicly available when the committee reports to the House, Standing Order 214(3). If the evidence contains material that may seriously damage a person's reputation and this material cannot be returned, resubmitted, or expunged, it will be made available to that person, who will also have a right of reply, Standing Orders 231(1), 232, 233, and 234.
- To our committee members, having given leave to hear this evidence in private, you may not disclose it outside this room until the item of business is reported to the House, Standing Order 214(3). Premature disclosure of private evidence could lead to a finding of contempt, Standing Order 401(p).

Just a quick question before we start. We have only received your evidence this morning. Why is that?

Holsted It was really a matter of clearing it through the various channels, and I apologise for the lateness. I wanted to make sure that what we were providing was appropriate for a committee that was talking about an individual and private case. I did actually hold it back and took some material out, which I thought was not necessary to inform the committee of the issues, particularly in relation to the issue at question, which is around the value—or not—of having an independent complaints panel, which I saw as being the focus of the committee's attention.

Shanks OK, we've got you until 10.30, so if you would just like to talk to us and we would like to ask some questions.

Holsted Absolutely. I'd be very happy to go straight to questions, but if I could just perhaps make three points before we do that. The first is I want to make it really clear how important it is that the Ministry of Social Development does respond to complaints by any of its clients across any of its service lines. I think it is worthy of note that it wasn't until Child, Youth and Family came within the Ministry of Social Development that any formal complaints process was established, at all.

The second point I want to make is that the clients having confidence in those complaints processes is very important to us, which is the reason that when the chief executive panel was set up, it was agreed that only external people would be on that panel, and external people of very good standing who would have credibility in the social work and wider community. It is also the reason that that part of the process is managed out of my bit of the shop, whereas the initial complaints are handled in Child, Youth and Family itself.

It might be useful also to give you some idea of the scope and scale of this. Most of you will be familiar that Child, Youth and Family in the last year received about 115,000 notifications of concern of child abuse. Of that, about 58,000 required further action. Of that number, 532 were registered as complaints. Of that 532, 34 went through to the national panel. So, in other words, the large majority of them are being handled where they should be, at the first point of reference.

Prasad Excuse me, could you just go through those figures again? This is the complaints you get?

Holsted Yes, notifications are about 115,000. Of those, about 58,000 required further action, 532 of those were registered as complaints last year, and of that, 34 went to the panel. I think probably of more importance in some ways is that since the panel was established in 2009, only three cases have not been fully resolved. Those three cases are: one, where a complainant is upset about the level of an ex gratia payment that is being offered to them; a

second complainant who remains unhappy was concerned that the panel could not address her concerns about the Ministry of Justice, so there were a wider number of departments involved; and the third is the case that you're aware of, which is Mr Axford's case, where he did initially think that the panel's findings were actually very, very good but has subsequently found that he is not satisfied with those.

I am very happy to take questions.

- Shanks I suppose the big question is that Mr Axford came to us because he was frustrated, because he didn't think it was independent enough in terms of people giving evidence in to the committee. It was only really MSD social workers or MSD staff giving evidence into that committee, and that is closed, is it? Do you see any way that you could make the process that you've got in place now so it wasn't just MSD paid employees giving evidence into that?
- Holsted The impartial panel that reports to the chief executive, the panel that is chaired by Mel Smith, can talk to anybody it wants.
- Shanks Does it, or do you know in practice whether it does?
- Holsted Generally speaking it will rely on the papers, because the volume of information that goes before that panel is vast. So it's not simply a case of Mel Smith and his panel going into a room and just talking to social workers. They get all of the reports, all of the record that goes with that case, and they go through that in meticulous detail.
- Shanks And how often do they bring people in to give evidence?
- Holsted On every occasion, I think.
- Gandy I think on every occasion to date. And on some occasions after the hearing they will have gone and talked to some other people. On one occasion I can think of, the chair of the panel has actually gone to a site office to go and talk with people directly there.
- Prasad Thank you. I don't want any of my comments to be taken as a criticism of Child, Youth and Family or indeed of what you're doing or the cases you've had. My mind is exercised by the area in which you do your business, which is a very difficult area and it is becoming more and more contentious, so to speak. It takes only a small number of cases to create the environment or the image that something is wrong, etc. You know what I'm talking about; the key cases that have come up. Those will always be difficult. So I don't want mine to be a criticism, because I do know your organisation quite well.

I just want you to exercise your mind on the question of an independent review or a panel that is at more arm's length than you currently have, if somebody feels really aggrieved. At the moment, for police, you can go somewhere. It's got its own mechanisms, and it can publish its results, do

what it likes. Would it be helpful to Child, Youth and Family, in the context of the difficult work you do, to just have that weight taken off, to say: “Well, there is somewhere you can go and they will make a decision way away from us. We’ll report to them, as you do, and then do that.” Would that really be a hindrance? What would be the implications of that?

Holsted No, no, two things. Can I just assure the committee that if it’s the Government’s wish to have an independent panel then we will facilitate that and we will provide you with all the information you need to establish such a thing.

Prasad Yes, you’ve said that.

Holsted So we’re absolutely open to that. We do have an Ombudsman. We make clear to all of our complainants that that is where they should go or can go if they want that arm’s length. Very few have done that. As I say, if you come back to the actual numbers that have gone to the panel and have not been resolved, we’re dealing with three—one of which is before this committee.

So the question then would be, to what extent does the Government wish to establish something for what is a very small number? But, absolutely, it’s not a hindrance, it certainly wouldn’t be a hindrance. It would be potentially another layer and another cost, and another complexity, but not a hindrance.

Prasad Would it be a help?

Holsted I don’t know. I don’t think we’re feeling that we’ve got a problem at the moment.

Prasad Well, in this role, I can say to you quite honestly that there’s more than 34 people who’ve come to me to say: “You know, I did this, I did that; that didn’t happen.” I said: “Well, we’ll talk to them.” What they sometimes tell us is quite worrying. I’m sure that every member of Parliament has some of those cases. So there’ve been times where you scratch your head and say: “Well, that is an internal process.” Even though you’ve got this independent panel and they are eminent people and we know them all—and it’s not a criticism of that—it’s just something that is more than I’m seeing, more out there.

Holsted Well, it’s really a policy decision. At the moment we refer to the Ombudsman and we rely on the fact that in this country we are fortunate we’ve got a number of bodies. So over and above that, I mean depending on the nature of the complaint, we’ve got quite a busy space here. Child, Youth and Family is, if you like, overseen by quite a range of organisations, including the Children’s Commissioner, and you’ll be familiar with those roles. So it is absolutely a policy decision as to whether or not further independence is required.

- Prasad           Talk a little bit about the role of the Children’s Commissioner in terms of these kinds of cases where somebody really feels aggrieved. What role does that office currently play?
- Holsted           Obviously, fixing or resolving complaints is important. As important is learning from the experiences that have led to the complaint and feeding back into Child, Youth and Family improvements in practice. That is really where there is an intersect with the Office of the Children’s Commissioner, because he is concerned with practice. That is where the intersect is. Individual cases of a complainant can reveal individual cases of practice that are not sufficiently good. If those cases are sufficiently serious they will become employment matters. So there’s a number of triggering things here. They are complex cases. None of these are simple cases—none of them. And while sometimes when they first appear, on the face of it, it can seem, you would say, blindingly obvious that something has gone wrong, when you start to unravel the complexity of these people’s lives and interactions with ourselves and other agencies, there is never a simple case. Marama can talk more specifically about the nature of the complaints that give rise—
- Prasad           Just following that up again—and, Marama, do comment. So an individual who feels aggrieved goes to the Children’s Commissioner to say: “This has happened to me. I want you to investigate.” They will look at it from a practice lens and make comments on it, but would they take up that case with you?
- Holsted           No.
- Prasad           OK, so there is a difference.
- Borrows           I guess that my questions are around the philosophy or the prospect of having an independent panel. After spending a long time in the police with an independent panel, I guess my question is why should we have an Independent Police Conduct Authority but we don’t have something similar at work that does the same thing. I recognise, for instance, that on a day-to-day basis the police are sort of depriving the liberty of people on a far more frequent basis and so generating a hell of a lot more complaints. But, at the same time, what CYFS workers are doing, on a less frequent basis, actually has very grave ramifications for those people involved too, or very emotive. What’s wrong with having an independent panel? At the moment, your answer only seems to me: “Well, if the Government wants one, we’ll have one.”
- Holsted           The reason it wasn’t established originally—because this was considered at the time the panel was set up—was a feature of what was already in place in terms of complaints processes. The general feeling at the time was that the additional cost around an independent process—not just the cost of the panel but the cost its implementation—didn’t warrant it in light of the other checks and balances that were in place. Now, that is some years ago that that was considered. That would’ve been 2007?

- Gandy 2006.
- Holsted 2006. It was decided at that time that we wouldn't go for an independent panel. So it was discussed. It wasn't ruled out. In terms of your point, though, I think it is important to note the difference between what the police do in terms of their actions. Child, Youth and Family staff take actions against people when courts have decided they should do that. So individual—
- Borrows Yes, I recognise that, but they are generally on applications made by Child, Youth and Family. In a similar way it is like the police getting a search warrant or the police getting an arrest warrant. So it doesn't put them above the scrutiny of the Independent Police Conduct Authority. So because Child, Youth and Family are doing that on their own volition I do not see why it shouldn't be scrutinised independently. It seems to me that your checks and balances are on the initiation of the complainant rather than of a sort of monitoring authority.
- I mean, you talk about, for instance, the Children's Commissioner or the Ombudsman, but that is on appeal from the complainant as opposed to anyone who has got a commissioner's-type responsibility to actually, on their own volition, demand, scrutinise, and monitor files as a day-by-day process. I guess where my concerns come from that is that we've undertaken another inquiry around child offending. From the courts—that is, the judges—and other people who are engaging with Child, Youth and Family there has been some concern about the way business is done. I am just wondering, then, what is in place now to review your processes, to know that what's being done is fair and does meet the criteria for best practice without a complaint?
- Holsted Oh, thank you. Just go back a wee bit. Just bear in mind where Child, Youth and Family has come from. It was struggling three years ago to meet its minimum requirements. It is now doing so. It is in charge of its business. The absolute focus of the chief social worker and the deputy chief executive of Child, Youth and Family now is to focus on quality and consistency of social work practice, and there is a serious and in-depth piece of work that the chief social worker, who, of course, reports to the chief executive directly, is intended to focus absolutely on quality and consistency of social work practice. Marama, do you want to discuss that a wee bit more?
- Wiki So the Children's Commissioner, the role they play as well, they monitor us. We've also got the Ombudsmen's office, which keeps a close monitor on us as well. So those are what Iona describes as our checks and balances that we have in place, outside of the complaints process. The Children's Commissioner will visit our sites and all our residences on a yearly basis. They have an audit framework that they do their checks on, and they report on us, on all those areas that are of concern.
- Borrows So they can demand to see files and audit those as well?

- Wiki Yes, they do come in prior to the audits and they will go through Cyras, our case management system, to look at individual cases and raise any concerns with us, either immediately or following the report—the audit, their site visit, and audit report that comes subsequently.
- Borrows So when you say you’ve had 532 complaints, of which 34 have gone to the panel, who decides what goes to the panel and what’s handled by the department?
- Holsted They’re all handled in the first instance by Child, Youth and Family. At the beginning of the process, the complainant is advised that if they are not satisfied with what comes out of the Child, Youth and Family process, it will go to the panel.
- Borrows So it’s really their decision whether or not it goes to the panel. It’s not a case of Child, Youth and Family looking at this and thinking: “Gee, this needs some”—
- Holsted No. What Child, Youth and Family does do is try to resolve the complaint as close to the source of the complaint as possible, which is a normal process. But if that’s not working, they will escalate it to a senior person in the region, to try to resolve it there. If that still doesn’t work, it will go to the panel.
- Borrows Are you surprised that less don’t go to the panel, or more don’t go to the panel?
- Holsted No, I would have thought that just under 10 percent would be what I would be expecting.
- Borrows What sort of scrutiny is given, or customer satisfaction survey is done, to find out how complainants feel they’ve been dealt with by the process?
- Holsted I don’t think we have a formal process. We have had letters from people. We haven’t got a formal process. That’s certainly something we could do.
- Borrows I just don’t think that’s good enough. What you’re saying is you have 530-something complaints, which you’ve dealt with. We know that when people get dealt with they either are so annoyed or whatever they will take it to the next level, or they will say “Oh stuff it. It’s not worth it.”, and they will walk away from it. You don’t have a process at the moment to find out how the people who have been dealt with, in this case 530-something people; what their level of satisfaction was at the process. So you say there’s no audit or customer satisfaction on how they’re performing? You know, who’s responsible for contacting those 532 complainants and saying: “OK, you had a complaint. You’ve been through the process. How did it go for you?” Who does that?
- Wiki The site manager is responsible in each site office to respond back to the complainant. At that time, if they are unhappy and it is unresolved, it

automatically goes into what we call a regional review, so that's all part of phase one. Then that's taken up to our regional office to take a look at to make sure we've addressed that complainant's concerns appropriately, and then if that's the case and it's still unresolved, and the complainant wants to, they can take it through to the CE.

Shanks But you're only talking about whether it's unresolved. You're not talking about whether they're actually satisfied with the process. So there is no system in place.

Holsted That's right, but I think it's also important to note what the nature of a lot of complaints is, and this is a significant learning for Child, Youth and Family and something they're building into their quality of social work practice—and it's communication. In a huge number of these cases the complainant doesn't feel like they've been listened to. So resolving it is not about returning a child; it's not of that nature. It is actually, have you taken the time to go back and talk to that family, and step back and say: "Actually, you're right. We didn't do that properly. We're sorry; we'll get it right next time."

We monitor the nature of the complaints as they come in, so we do know the sorts of reasons. It's information sharing, it's communication, and access, and access issues are really, really tricky. It's not uncommon, for example, for a separated couple to draw a complaint against Child, Youth and Family when in fact the issue is that their marital breakdown is leading them to have a dispute over access to children. I've seen a number of those cases, tragically. So the complaints are not quite of the nature as you might expect. Some of them are, of course, at the top end, but most of them are not.

Borrows But you don't have to be an MP for very long to get a fairly good gauge of the nature of complaints.

Shanks Can I ask a question on the time frames between someone who's complained and someone who gets to the panel. What's the normal time frame for the process?

Gandy For the Child, Youth and Family process there's a time frame of, I think, about—

Wiki 20.

Gandy —20 days. If a person lodges a complaint with the panel, at the moment I think the panel is meeting generally about every four to six weeks, and we work on the basis of having a complaint heard by certainly the panel after the next one, which just accounts for the fact that people can complain just before a panel meeting and there's quite a lot of work to do around gathering papers and making sure the panel has everything it needs.

- Shanks            So it's about a three-month process from the time you've put in you're not happy with what your first outcome is with the department, to get to the panel.
- Gandy            Yes, it could be about that.
- Prasad            Just two things, if you could comment on. One is, how much resource within your organisation is currently taken up with complaints? Secondly, do you report on the complaints and how they were resolved, in the report or somewhere?
- Holsted           In terms of the national panel, there's a dedicated unit. It's really difficult to measure it in Child, Youth and Family because it's part of business as usual; it's part of the relationship. There isn't a separate complaints panel, because, of course, they're dealt with in the region where they arise. So that's not measurable; I don't think we could do that. But the unit itself is well resourced within the Ministry of Social Development with corporate governance, and certainly Mel Smith has commented to me several times that he feels really well supported.
- Prasad            Do you know what it costs?
- Holsted            About 300K. Just below 300K.
- Prasad            And no public reports from the independent advisory group about—
- Holsted            We have internal reporting. So Bryn's team reports and feeds back to Child, Youth and Family, and that's part of that learning loop, yes.
- Prasad            Thanks.
- Ross              You've mentioned a number of times the Ombudsman, the extra step that people can take from there. What powers does the Ombudsman have with regard to Child, Youth and Family complaints?
- Holsted            How many?
- Ross              What powers does the Ombudsman's office have with regard to Child, Youth and Family complaints, if someone complains to Child, Youth and Family?
- Holsted            The Ombudsman has significant powers. They have the full range of statutory powers. They can demand any information. Worst case—or best case, depending on how you look at it—they can report to Parliament.
- Ross              You mentioned in the report that 130 complaints had been received by the Ombudsman's office with regard to Child, Youth and Family and 31 have been referred back. What about the other 99?
- Holsted            Sorry—I'm just looking. The 130—

- Ross            On page 7 and 8 it says: “In 2009-10 the Ombudsman received 130 complaints about Child, Youth and Family, of which 31 were referred to the ministry for further inquiries.”
- Holsted        Oh, yes. So the Ombudsman will have satisfied herself that those other cases have been dealt with. So we can’t manage that. If a complaint has gone directly to the Ombudsman, we then respond to just those things that she brings to us. Otherwise, she deals with them within her process.
- Ross            OK.
- Holsted        So one imagines they were resolved or she decided not investigate further.
- Ross            One last question. On page 3 you mention that many of the complainants feel most strongly about decisions taken by the courts. Is that just a general feeling you have, or have you actually got some statistics about what people are actually complaining about that you could show us?
- Hosted        No, I don’t have statistics on that. I think that is an assumption that certainly the people most frustrated and angry are often people who have lost their children. So, again, it’s that top end.
- Ross            OK.
- Shanks        Do we have any final questions? No? Thank you for coming along. Thank for your evidence. We really appreciate your time today.
- Holsted        Thank you.

**conclusion of evidence**