

**Australian Federal Police  
and the  
Child Support Agency,  
Department of Human Services**

**CAUGHT BETWEEN TWO AGENCIES:  
THE CASE OF MRS X**

**August 2009**

*This is an abridged version of report 14/2009.  
The full report has not been made publicly available  
due to privacy considerations*

Report by the Commonwealth Ombudsman,  
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **14|2009**

## Reports by the Ombudsman

Under the *Ombudsman Act 1976* (Cth), the Commonwealth Ombudsman investigates the administrative actions of Australian Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

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Most complaints to the Ombudsman are resolved without the need for a formal report. The Ombudsman can, however, culminate an investigation by preparing a report that contains the opinions and recommendations of the Ombudsman. A report can be prepared if the Ombudsman is of the opinion that the administrative action under investigation was unlawful, unreasonable, unjust, oppressive, improperly discriminatory, or otherwise wrong or unsupported by the facts; was not properly explained by an agency; or was based on a law that was unreasonable, unjust, oppressive or improperly discriminatory.

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## **INTRODUCTION**

Few individual complaints that the Ombudsman investigates culminate in a formal report. Publication of a report can involve an unreasonable disclosure of personal information about the person who complained to us, or related third parties. However, the case of Mrs X holds lessons for all Commonwealth agencies that administer programs or deliver services in cooperation with other organisations. That explains the decision to publish this abridged report.

## **BACKGROUND**

Mrs X's complaint about the Child Support Agency (CSA) and the Australian Federal Police (AFP) arises from the arrangements for making and enforcing CSA Departure Prohibition Orders (DPOs). The CSA uses DPOs as a tool to encourage a parent who has persistently and unreasonably failed to pay their child support debt to make a satisfactory payment arrangement.<sup>1</sup> It is an offence for a person to leave Australia while a DPO is in force.

DPOs are administered through the joint efforts of the CSA, the AFP and the Australian Customs and Border Protection Service (Customs). Essentially, the CSA is responsible for issuing the DPO, and the AFP and Customs are responsible for enforcing it at international departure points by stopping people who attempt to leave Australia while subject to a DPO.

### **Mrs X's complaint**

Mrs X's complaint concerns the AFP's failure to prevent her former husband, Mr X, from leaving Australia while there was a DPO in force for him. She believes that both the CSA and the AFP are responsible for that failure.

Since 2005, Mrs X has been passed between the CSA and the AFP in her attempts to have the Commonwealth acknowledge and remedy her situation. She first approached the Ombudsman's office in 2007 about her complaint. She applied to the CSA and the AFP for compensation in early 2008. The CSA received her claim, but did not arrange to meet with the AFP to discuss it until August 2008. A further 12 months passed before either agency had made a decision on her claim. We consider that the CSA and the AFP's delays in finalising her compensation claim are unjustified.

### **Making and administering the DPO for Mr X**

The CSA had been unsuccessful in its efforts to collect child support from Mr X over a number of years. By 2004, Mr X's child support debt exceeded \$50,000. This was money that Mrs X was entitled to receive from Mr X, but that she would not receive unless and until the CSA was able to collect it from him. The CSA decided to make a DPO for Mr X.

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<sup>1</sup> Report no. 08/2009: *Child Support Agency: Administration of Departure Order Powers* contains a discussion of the circumstances in which the CSA issues DPOs. It is available on the Commonwealth Ombudsman's website at: [http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/report\\_2009\\_08/\\$FILE/onlineCSA\\_DepartureProhibOrders\\_20090603.pdf](http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/report_2009_08/$FILE/onlineCSA_DepartureProhibOrders_20090603.pdf).

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The CSA notifies the AFP when it issues a DPO. When the AFP receives that notification, it records an alert for the person on the database that Customs checks before it allows a person to leave Australia. If Customs finds an alert for a person who is attempting to leave Australia, the person is stopped and referred to the AFP.

The CSA notified the AFP of Mr X's DPO. The AFP recorded an alert for Mr X for a limited period. This was the usual arrangement at the time, even though a DPO remains in force until the CSA revokes it. The AFP's practice was to contact the CSA when the alert expiry date arrived to establish whether the DPO was still in force. If so, the AFP would renew the alert for a further period. However, in Mr X's case, the alert expired and was not renewed, because of a communication breakdown between the CSA and the AFP.

Mrs X was aware that the CSA had made a DPO for Mr X. In 2005 she learned that Mr X had made plans to go overseas. Mrs X contacted the AFP on the day of Mr X's proposed departure, to make sure that he would be stopped at the airport. The AFP told her that Mr X had already been allowed to board his flight to leave Australia. The AFP said that Customs had not stopped Mr X at the Customs barrier at the international airport, because the alert for him had expired.

Mrs X saw the DPO as her best chance to receive any child support from Mr X. She thought the DPO meant that the AFP would stop Mr X at the airport and seize any cash or cheques that he was taking with him. Mrs X believed that when Mr X went overseas, he would have been carrying enough money to pay his child support debt. She says that she has suffered a financial loss as a result of the AFP's failure to stop Mr X leaving Australia.

The CSA and the AFP conducted separate internal investigations of Mrs X's complaint. Each agency blamed the other for the expired computer alert. The CSA claimed that it had sent a fax to the AFP telling the AFP to renew the alert for Mr X, but the AFP denied receiving it (the 'disputed fax').

In 2007, Mrs X complained to us about the incident and the way the CSA and the AFP had treated her since it happened.

## **CONCLUSIONS**

### ***The expired alert – what went wrong?***

Our investigation of Mrs X's complaint revealed that the CSA and the AFP did not have adequate procedures for administering DPOs. There was no formal protocol between the two agencies, and this had led to an arrangement of ad hoc communication, with handwritten and amended documents being transmitted by fax.

The CSA appears to have attached no significance to the fact that the AFP did not acknowledge receipt of its fax instructing the AFP to renew the alert for Mr X. The CSA simply assumed that the AFP had received and acted upon it.

We did not make a finding about which agency was at fault in relation to the disputed fax, although we consider that the AFP's evidence about the faxes that had been sent and received by each agency on the relevant day was preferable to the CSA's evidence. Nevertheless, we concluded that both agencies had a responsibility to ensure that they had in place robust procedures for administering DPOs. Their failure

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to do so had led to the situation where Mr X had been able to leave Australia, despite the DPO.

The CSA and the AFP have since advised us that they have developed and implemented Guidelines for administering DPOs.

***Mrs X's claim for compensation—poor handling by both agencies***

Mrs X says that in February 2008, she faxed a letter to both the CSA and the AFP, claiming compensation for the child support that she believed she missed out on as a result of their deficient procedures. The AFP says it has no record of receiving that fax. Mrs X faxed a copy of her claim to the AFP in August 2008. In August 2008, the CSA advised us that it intended to consider Ms X's compensation claim in conjunction with the AFP. We stopped our investigation while the two agencies considered her compensation claim. In April 2009, Mrs X contacted us again, complaining that neither agency had made a decision on her claim.

In July 2009, we provided the CSA and the AFP with a draft report of our investigation of Mrs X's complaints. At that time, Mrs X had still not been told whether she would receive compensation. We consider that delay unreasonable. We also believe that there have been serious deficiencies in the way that both agencies have responded to Mrs X's complaint since she first brought it to their attention in 2005. The most serious flaw, in our view, is that the CSA and the AFP have failed to coordinate their efforts, unnecessarily prolonging the process and increasing the stress and inconvenience for Mrs X.

The following criticisms can be made of the way the AFP and the CSA have handled this matter:

- The initial investigation of Mrs X's complaint by both agencies was inadequate. Both agencies claimed to have exhaustively investigated her complaint, but clearly this was not so.
- There has been inordinate delay in the resolution of Mrs X's complaint and compensation claim. The delay is not justified by any inherent complexity in Mrs X's claim, but is instead attributable to administrative weaknesses in both agencies and to the lack of a joint investigation and resolution of her complaint and compensation claim.
- The AFP's handling of Mrs X's compensation claim was inadequate in the following ways:
  - the AFP failed to identify Mrs X's claim as one under the Commonwealth's scheme for Compensation for Detriment caused by Defective Administration (the CDDA scheme)
  - on several occasions the AFP cancelled or postponed meetings with the CSA to discuss Mrs X's claim
  - the AFP was unwilling to speak directly with Mrs X about her claim and told her to deal with its solicitors.
- Communication by both agencies with Mrs X was inadequate. Her inquiries were not always answered, her complaint was not properly acknowledged, and she was left at times in a situation of uncertainty and confusion.

## RECOMMENDATIONS

Arising out of this investigation, I made the following recommendations. After each recommendation we include a discussion of the agency response and any developments.

### **Recommendation 1**

The CSA and the AFP should give priority to finalising their consideration of Mrs X's compensation claim and calculate interest on any sum offered, in view of the delays involved.

*The CSA notified Mrs X on 11 August 2009 that it had decided to refuse her claim for compensation. This was six days after the six-week period that the CSA and the AFP said they would require to finalise a joint response on Mrs X's claim, following their meeting on 24 June 2009. The CSA apologised to Mrs X for the delay in making a decision.*

*The AFP had not finalised its consideration of Mrs X's compensation claim by 13 August 2009 when it responded to our draft report. The AFP said that it had provided a report to the Minister for Home Affairs, and told us that it expected a decision shortly.*

### **Recommendation 2**

The CSA and the AFP should provide Mrs X with a detailed explanation of the basis for their compensation decision, when made, including a report of their separate investigations of the circumstances in which the computer alert for Mr X was allowed to expire.

*The CSA and the AFP both accepted this recommendation in part. The CSA has provided, and the AFP intends to provide, Mrs X with an explanation of the reasons for their separate decisions on her compensation claim. However, the two agencies still do not agree on the reasons Mr X's alert was not renewed and consider that a report of their separate investigations is unlikely to assist in resolving Mrs X's complaint.*

### **Recommendation 3**

The CSA and the AFP should review their DPO alert guidelines to include a complaints handling protocol and develop arrangements to cooperatively investigate and consider complaints and compensation claims which relate to the actions of both agencies.

*The CSA advised us that it intends to implement this recommendation as soon as is practical.*

*The AFP advised us that it considered a complaints handling protocol would be of limited utility and that it expected a joint CSA/AFP complaints mechanism would be very seldom used.*

### **Recommendation 4**

The CSA and the AFP should provide a suitable apology to Mrs X for their involvement in the events that allowed Mr X to depart Australia and their failure to appropriately respond to her complaints.

*The CSA provided a written apology to Mrs X for the administrative failure that did not prevent Mr X leaving Australia and for the delay in resolving her complaint and compensation claim. It also offered her the opportunity to meet with a senior CSA officer.*

*The AFP said that it would acknowledge to Mrs X our finding of inadequacy in the communication arrangements between the AFP and the CSA. It also said that it would express regret for the delay in resolving her compensation claim. However, the AFP told us that it did not consider that its actions warranted an apology.*

**Recommendation 5**

The AFP should review how it handles claims under the CDDA scheme having regard to the recommendations in the Ombudsman's report *Putting things right: compensating for defective administration. Administration of decision making under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA) Scheme*, Report No 11/09.

*No response required or received from the CSA.*

*The AFP advised us that it would review its arrangements for managing CDDA claims in the light of our report 'to ensure that it maintains best practice in this area'. The AFP said that it would do this 'irrespective' of our recommendation.*

## **AGENCY RESPONSES**

The CSA and the AFP each provided separate responses to our report.

### ***The CSA's response***

The CSA told us that it 'fully appreciated the significance' of our decision to prepare a report of our investigation and responded positively to our recommendations. The CSA had finalised its consideration of Mrs X's compensation claim and advised her of its decision by the time that it responded to the draft report. It acknowledged our concerns about the delays involved in that process, saying:

*'It is accepted, however, that this process has taken far too long and has involved too much time spent in trying to resolve the agencies' conflicting views about the circumstances which form the basis of Mrs X's complaint and compensation claim.'*

The CSA accepted that it and the AFP were jointly responsible for the administration of DPOs and that Mr X had been able to depart Australia because of defects in the processes that the two agencies had in place at the time. However, the CSA concluded that even if Mr X had been stopped at the airport, this was unlikely to have resulted in him paying his child support debt. Accordingly the CSA concluded that Mrs X had not suffered a financial loss as a result of its defective administration and refused to pay any compensation.

The CSA acknowledged that Mrs X was likely to be disappointed with its decision and offered to make a senior officer available to discuss it with her. The CSA also apologised to Mrs X for the delay and the way it handled her complaint and claim.

The CSA told us that it intended to work with the AFP to develop a complaints handling protocol for matters concerning the actions of both agencies.

### ***The AFP's response***

The AFP had not finalised its consideration of Mrs X's compensation claim by the time that it responded to our draft report. The AFP disputed that there had been unreasonable delay in dealing with the claim, saying that it only received it in August 2008 and that although 12 months had passed since then, 'reasonable steps have

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been taken to progress it throughout this period'. The AFP argued that it should not be criticised for the approach that it had taken to Mrs X's compensation claim. The AFP said that it could have dealt with the claim on a single agency basis, but that it had adopted a joint approach with the CSA for Mrs X's benefit.

The AFP asserted that it had acted promptly and appropriately at all times in its handling of Mrs X's complaints and compensation claim. It acknowledged our conclusion that there was inadequacy in the communication arrangements between the CSA and the AFP, but was not prepared to agree with it.

The AFP argued that our draft report did not convey a complete picture of its role and actions in Mrs X's case. It asked that we amend the report to make clear its view that 'the AFP had a limited and reactive enforcement role in respect of the DPO system administered by the CSA' and that 'the AFP's role was only to properly implement the CSA's instructions. To the extent that it carried out any additional functions, it did so as a courtesy, not as an obligation, and the CSA nevertheless remained responsible for controlling initiation, maintenance and removal of alerts.'

The AFP also told us that it believed a joint CSA/AFP complaints mechanism for DPOs was unnecessary.

### **Lessons for other agencies**

When agencies share the responsibility for administering a particular service or program, each is likely to be responsible for discrete parts of the whole. A failure in one agency can undermine the effectiveness of the entire service or program. Furthermore, while each agency may be confident that it has in place good internal processes, it is essential for effective joint service delivery that they develop a common understanding of their separate responsibilities and that they have in place arrangements to discuss and remedy any problems that may develop at the points where those responsibilities intersect.

When things go wrong, members of the public may well be adversely affected. Navigating between two or more Commonwealth agencies to fix a problem can be difficult. My office found dealing separately with both the CSA and the AFP to resolve Mrs X's complaint challenging. Mrs X found the task impossible. In our view, Mrs X's complaint clearly illustrates the need for agencies who work together to deliver programs and services to also work together to fix any problems arising from their activities.

The Commonwealth Ombudsman's office has a range of products that will assist agencies to develop effective and responsive complaint handling mechanisms and to improve the way they deal with compensation claims. The following publications are available from our website [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

- *Better Practice Guide to Complaint Handling*
- *Fact Sheet 7 Complaint handling: multiple agencies*
- *Report 11|2009 Putting things right: compensating for defective administration*

The CSA's response to our investigation suggests that it has used Mrs X's experience to improve the way that it deals with DPOs and that it will attempt to engage the AFP in any future complaints about matters involving both agencies. We hope that other agencies, including the AFP, can learn from Mrs X's experience of being 'caught between two agencies'.