



MINISTRY OF SOCIAL  
DEVELOPMENT

TE MANATŪ WHAKAHIATO ORA

15 SEP 2016

Dear

On 10 August 2016, the Ministry received your request, under the Official Information Act 1982, for the information regarding the Two Path Approach for resolution of historic claims and the payment level categories. You provided the following context for your request:

- *I wish to make an OIA application surrounding the MSD Fast Track Scheme (FTD) – also known as the Two Path Approach to resolving historic abuse claims.*
- *Based on a High Court Case XY v Attorney-General as Representative of the Ministry of Social Development [2016] NZHC 1196 (3 June 2016) ('XY' being Cooper Legal) it is clear that the MSD had 6 categories by which they defined the level of abuse a claimant suffered. These 6 categories were then used as the basis for the sum of settlement payment offered to a claimant. The first category being a \$5,000.00 settlement offer (with a guarantee that all claims assessed as eligible would receive a minimum payment of \$5,000) and the 6th category being a capped maximum payout of \$50,000.00.*

For the sake of clarity, I will address each of your questions in turn:

- *I would request a full outline of how these categories are/were defined/established based on type/level of abuse, outcomes etc? I.e. what would constitute a \$5,000.00 settlement offer (lowest end of the scale in the FTS settlements)? What would constitute a \$50,000 settlement offer (highest end of the scale in the FTS settlements)? And everything in between?*

The definitions of each category are withheld under section 9(2)(a) of the Official Information Act in order to protect the privacy of natural persons, on the basis that releasing the descriptors would enable people to identify the nature of the abuse and/or harm that a claimant suffered whilst in care. The need to protect the privacy of these individuals outweighs any public interest in this information.

The definitions of each category are also withheld under section 9(2)(j) and section 9(2)(k) of the Act as there is a greater public interest in the ability of the Ministry to continue dealing with settlement of historic claims without prejudice or disadvantage.

It is important to understand the basis on which these categories, and the associated payment amounts, were established. The underlying principle of the Two Path Approach was to give claimants a choice as to how their claim might be resolved and to ensure that payments made under the approach should be, to the greatest extent

practicable, consistent and comparable with those paid to those people whose claims had been resolved prior to implementing the approach.

To that end, the claims that had been fully assessed prior to implementation of this process were analysed to identify the key characteristics of each and the rationale for the payment, or no payment, that was made to them. These characteristics and payment amounts were then grouped into five broadly described categories of harm. Several reviews of the categories were then conducted to ensure consistency and clarity of the descriptions. This exercise included input from the legal representative for a large number of claimants. This resulted in six categories being adopted along with the payment levels that applied to each. It is also important to note that the spread of claims across the categories should reflect the spread of payments made to those 500 previously assessed claims. Recognising that, since the fast track assessment process relied on accepting the claim at face value, it was agreed that (subject to passing a fact check) no claim would receive a \$0 offer.

The fast track assessment process included reviewing all allegations made by the claimant, accepting them at face value and subject to a basic fact check, placing the claim in the category that appropriately recognised the seriousness of the allegations. The fact check sought to determine three things – that the Ministry had a legal responsibility or obligation to the claimant at the relevant time; that the claimant was in the residence(s) and/or home(s) where the alleged harm occurred at the relevant time; and that, where identified by name, any staff member(s), caregiver(s) or agent(s) acting for the Ministry against whom allegations were made was employed or otherwise in the residence and/or home at the relevant time.

- *I would request information regarding the payment/settlement amount for each of the 6 categories?*

The payment levels for each of the six categories for the Two Path Approach are shown in the table below:

<b>Category</b>	<b>Payment Amount</b>
Category 1	\$50,000
Category 2	\$40,000
Category 3	\$30,000
Category 4	\$20,000
Category 5	\$12,000
Category 6	\$5,000

- *I have received OIA previously from the MSD (4/7/2016) where it was stated that 420 Fast Track offers "were made by the Ministry between 19 May 2015 and 31 March 2016. The significant majority of these were made in May-June 2015." Could I have this total number of 420 Fast Track offers broken down into how many of the 420 offers were category 1, how many were category 2, how many were category 3, how many were category 4, how many were category 5, and how many were category 6?*

The table below shows the 420 fast track offers that were made between 19 May 2015 and 31 March 2016, broken down by category:

<b>Category</b>	<b>Number of Offers</b>
Category 1 (\$50,000)	18
Category 2 (\$40,000)	25
Category 3 (\$30,000)	40
Category 4 (\$20,000)	139
Category 5 (\$12,000)	78
Category 6 (\$5,000)	120

I hope you find this information helpful. You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz)

Yours sincerely



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