

Q FREQUENTLY ASKED QUESTIONS

Will I be given the opportunity to tell my side of the story?

Yes. You will be asked for a written description of your version of events. In some cases the investigation officer will also request a face-to-face interview with you. Tell the Commissioner's staff if your actions were influenced by resource constraints or the clinical circumstances of the consumer.

How long will the investigation process take?

This depends on the nature and complexity of the complaint. While some complaints may be straightforward and able to be completed to report stage within six months, other matters are complex, involving many providers and wide-ranging issues. Such investigations may take more than eighteen months to complete. In any event, we will keep you updated on progress at least every two months.

Will I need a lawyer?

This is something you will have to decide yourself. It may help to discuss the complaint with colleagues to get a feel for how they think the case might be decided. Your professional body may be able to help or to put you in touch with someone who has been through the investigation process. Some health professionals use lawyers but many do not.

Can I appeal the Commissioner's decision?

No. The Commissioner's opinion is final, so it cannot be appealed. However, the Office of the Ombudsmen and the High Court can review the way the complaint was investigated to ensure that everyone has been treated fairly.

Final report

The final report is sent to the complainant and the provider, and to the relevant professional bodies. Once any recommendations have been met, the file will be closed. Serious cases may be referred to the Commissioner's Director of Proceedings for disciplinary or civil proceedings.

No one enjoys being subjected to a complaint, but they are a feature of modern professional life. Even the most highly trained and proficient professionals occasionally make a mistake, and an examination of the processes and systems used may identify a means of preventing, or at least minimising the risk of, a similar situation recurring.

Although the findings of an investigation may be adverse, the Health and Disability Commissioner endeavours to ensure that the process is fair to all parties involved, as well as legally robust.

If you have any questions about the information in this brochure, please contact the investigation officer handling your case.



Health and Disability Commissioner
Te Toihau hauora, Hauatanga

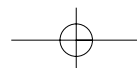
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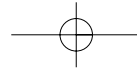


Health and Disability Commissioner
Te Toihau hauora, Hauatanga

Health and Disability Commissioner's Investigation Process

Guide for Providers





It is unsettling to be on the receiving end of a complaint from a patient. For many professionals it is an affront to be accused of providing a substandard service. Feelings of shock and anger, and fear of the potential consequences of the complaint are a natural response, together with uncertainty about the process of investigation.

Although the Code of Health and Disability Consumers' Rights focuses on consumers' rights, a provider facing a Health and Disability Commissioner (HDC) investigation also has rights. The stated purpose of the HDC Act includes the facilitation of "the fair, simple, speedy, and efficient resolution of complaints relating to infringements of [consumers'] rights". The statute specifically requires the Commissioner to act fairly in the course of an investigation.

Notification

First, providers under investigation must be informed of the intention to investigate, and of the details of the complaint (or the subject matter of the investigation if it has been commenced on the Commissioner's own initiative). In practice, providers are almost always sent a copy of a written complaint. The notification letter will set out the key facts that have been alleged and what the investigation will cover. You will then be invited to make a written response, which is usually required within one month. It is a good idea to seek collegial support at this stage.

Your response is a key part of the information the Commissioner will consider in deciding how to deal with a complaint.

Evidence gathering

Under the HDC Act the Commissioner has the power to obtain any information relevant to an investigation. In the letter notifying you of the investigation the Commissioner will often set out information you are required to provide, eg, a summary of the service provided, clinical notes, relevant internal reports, policies or procedures, or the name of other providers involved. The investigation officer will probably also obtain information from other sources such as hospital records, other providers who treated the patient, or witnesses to the events.

Staff are asked to ensure you are also contacted every two months to keep you informed about progress on the investigation. However, you may request an update at any time.

After the initial fact-gathering stage, the next step is usually to request advice from a peer who is an independent expert in the relevant field. The Commissioner's advisors are highly respected professionals in their field and, in the majority of cases, have been recommended by the relevant professional College.

Alternative ways of resolving complaints

Sometimes during an investigation it becomes clear that parties may be able to resolve the dispute by agreement. If this is the case the complainant may be referred to advocacy. Advocates act on behalf of the consumer and often facilitate resolution of low level complaints involving issues of communication or misunderstanding. Alternatively, a formal mediation conference may be called. Mediation offers a structured forum in which to work through issues of concern to the consumer and enables the parties to agree on their own resolution of the complaint.

Commissioner's report

Ultimately, it is for the Commissioner to form an opinion, on the basis of all the evidence gathered, including the expert advice where necessary (and it will almost invariably be needed in cases involving clinical standards), whether a consumers' rights have been breached. A copy of the expert advice will be included in the report.

The Commissioner's report will set out the alleged facts of the complaint and the provider's response to the complaint, as well as any other relevant information gathered during the investigation. In some cases where there is a conflict of evidence, the Commissioner may make findings of fact based on the available evidence. The report will conclude with analysis as to whether the provider breached the Code, and the reasons for that decision.

Response to provisional opinion

In the event of a provisional breach opinion, the provider is entitled to a reasonable opportunity to respond before the Commissioner finalises an opinion. If requested, the provider's written response, or a fair and accurate summary of it, will be appended to the final report. Current practice is to send a covering letter with the provisional breach opinion inviting comment on the findings and recommendations, usually within fifteen working days of receipt. This is the provider's opportunity to clarify any factual errors and to respond to the Commissioner's provisional view that the Code of Rights was breached.

A provider's response to provisional findings and recommendations is carefully considered in preparing the Commissioner's final report.

