



HEALTH & DISABILITY COMMISSIONER
TE TOIHAU HAUORA, HAUĀTANGA

Guide for Complainants

**Health and Disability
Commissioner's Investigation
Process**

Your complaint has been assessed and the Commissioner has decided to investigate it formally to see if the Code of Health and Disability Services Consumers' Rights (the Code) has been breached. This pamphlet explains the investigation process.

Assigning an investigator

An investigator will be assigned to your complaint. The investigator is responsible for the day-to-day management of your file and carries out the investigation on behalf of the Commissioner. If you have any questions during the investigation, please contact this investigator.

Impartial investigation process

It is important to know that the investigation process is impartial. The Commissioner is like a judge, conducting an investigation that is independent and fair to you and the person or organisation you complained about.

Scope of investigation

The Commissioner identifies the issues to be investigated. These may be different from the issues raised in your complaint. For example, the focus may be on specific issue/s within your complaint, or the investigation may take a broader view of the issues you have raised.

Obtaining relevant information

We always let the person or organisation the complaint is about (the provider) know about our investigation. Once they have been informed of a complaint, they are asked to give their side of the story. Often this takes some time as they may need to obtain the relevant documentation about the service provided.

When providers are told about the investigation, they are asked to provide any relevant documents

to be considered, such as medical notes, test results, X-rays, or other information relating to the service you were given. We may also require information from other people, such as caregivers, other providers, people who were present at the time of events, or ACC. It is important that you tell the investigator if you know of anyone who may be able to provide relevant information about your complaint.

The investigator may call you and the person or organisation that the complaint is about to clarify information.

Clinical advice

In many cases the Commissioner will seek advice from independent clinical advisors in the relevant fields, to help determine whether the actions by the person/organisation being complained about were appropriate.

Commissioner's report

Once we have all the information, it is put into a report outlining the facts of the case, which will form the basis of the Commissioner's provisional opinion as to whether the Code has been breached. You will have the opportunity to review the facts of the case and to comment on or add to the facts outlined.

The Commissioner will review your responses and then finalise the report, detailing the results of the investigation.

The provider/organisation involved in the complaint will also be given an opportunity to review the provisional opinion.

The final report will be sent to you, and to the person/organisation the complaint is about, and usually also to the relevant professional registration bodies such as the Medical Council or the Dental Council.

The Commissioner may make a number of recommendations in the report, including specific

recommendations about how the person/organisation could improve their practice, and for them to give an apology.

Director of Proceedings

In certain cases involving a serious breach of the Code, the Commissioner may refer the person/organisation to the Director of Proceedings.

The Director of Proceedings will then decide whether to take action against the person/organisation, before a disciplinary tribunal and/or before the Human Rights Review Tribunal. If this happens, you may be asked to be a witness in any court proceedings. That is something the Director of Proceedings will discuss with you if the need arises.

If the Director of Proceedings decides not to take proceedings before the Human Rights Review Tribunal, you may be entitled to bring proceedings in your own right. You can find more information about how to file a claim in the Human Rights Review Tribunal here: justice.govt.nz/tribunals/human-rights/make-a-claim.

Frequently asked questions

How long will an investigation take?

This depends on the nature and complexity of the complaint. While many investigations take around 12 months to complete, some more straightforward investigations can be completed in a shorter timeframe. Other investigations are very complex, involving many people or organisations and wide-ranging issues, and can therefore take longer. We will keep you updated on progress at least every 10 weeks. You can also request an update at any time. Please note that these timelines are in addition to the time taken to complete an initial assessment of your complaint before the decision to investigate formally.

What can I expect as a result of an investigation?

If the Commissioner finds that a person/organisation has breached the Code in relation to your care, the Commissioner may recommend that they make changes to their practice to prevent similar events happening again. Often the person/organisation will also be asked to apologise to you.

When recommendations are made, we follow up to confirm that they have been actioned.

If an investigation raises concerns about a registered health practitioner's competence, HDC may recommend to the practitioner's registration authority (e.g., the Medical Council) that it consider reviewing that practitioner's competence.

Not all complaints lead to a decision that there has been a breach of the Code. In these cases, we may still make recommendations to the person/organisation.

Can I get financial compensation?

The Commissioner does not have the power to order the person/organisation to pay compensation. In a very small number of cases the Director of Proceedings may seek compensation on your behalf before the Human Rights Review Tribunal. However, in the vast majority of cases there will be no financial compensation as an outcome of a complaint.

You may be entitled to bring proceedings in the Human Rights Review Tribunal in your own right, which could lead to compensation. You can find more information about how to file a claim in the Human Rights Review Tribunal here: justice.govt.nz/tribunals/human-rights/make-a-claim.

Can I appeal the Commissioner's decision?

There is no right of appeal against the Commissioner's decision. However, the Office of the Ombudsman and the High Court can review how the Commissioner carried out the investigation to ensure that it was done fairly and legally.

How your complaint is processed



If you have any questions about the information in this pamphlet, please contact the investigator handling your case.



HEALTH & DISABILITY COMMISSIONER
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Information in e text is available on our website.