

Fact Sheet 3:

Timeframes for responding to complaints under Right 10 of the Code



Along with the right to complain, Right 10 of the Code sets out the procedures that providers must follow when they receive a complaint:

1. A provider must acknowledge any complaint in writing within 5 working days (Right 10(6)(a)).
2. A decision on whether the complaint is justified or not, or whether more time is needed to investigate the complaint, must be made by the provider within 10 working days of giving written acknowledgement of receipt of the complaint (Right 10(7)).
3. If the decision is that more time is needed to investigate the complaint, and that more than 20 additional working days will be required, the provider must inform the consumer of that (with reasons) within the 10 working days timeframe (Right 10(7)(b)(ii)).
4. If the decision is whether or not the complaint is justified, the consumer must be informed of that decision (with reasons, any proposed actions, and any appeal procedure) “as soon as practicable” after making the decision (Right 10(8)).
5. The provider must give progress updates to the consumer at intervals of not more than one month (Right 10(4)) where a complaint is ongoing.

As the terms “month” and “working day” are not defined in the Health and Disability Commissioner Act 1994 (the Act) or in the Code, the definition in section 29 of the Interpretation Act 1999 is used:

“**month** means a calendar month”

A calendar month is the period from a particular date in one month to the same date in the next month (e.g., 1 October to 1 November).

“**working day** means a day of the week other than —

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
- (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday”

The timeframe in which the provider must make a decision on a complaint, and the timeframe in which the provider must communicate that decision to the consumer are different. A decision must be made within 10 working days of the provider giving written acknowledgment of receipt of the complaint, but the decision need not be communicated to the consumer within that timeframe. It must be communicated “as soon as practicable” after the decision is made.

“As soon as practicable” means exactly what it says, but there must never be more than one calendar month between communications from the provider to the consumer.

Three examples

A complaint is received on 1 October (a Tuesday) and is acknowledged in writing within 5 working days, on 8 October (the following Tuesday). On Tuesday 22 October (that is, within 10 working days of the 8th):

1. The provider makes a decision that the complaint is not justified. The provider must inform the consumer of the decision (including reasons, any actions taken, and any appeal process) “as soon as practicable” after having made it.

If the provider has not communicated with the consumer since acknowledging the complaint on 8 October, the provider must communicate with the consumer again by 8 November. The communication should include informing the consumer of the provider’s decision on the complaint, if this has not been communicated already.

2. The provider makes a decision that further investigation of the complaint is needed. The provider does not consider that the investigation will take longer than 20 working days.

At this stage, the provider can choose whether to communicate to the consumer the decision to investigate further. In any case, the provider must report to the consumer again by 8 November, at the latest.

The provider must continue to report to the consumer at intervals of no more than one calendar month, until the investigation has been completed.

3. The provider makes a decision that further investigation of the complaint is needed, and that this is likely to take more than 20 working days.

The provider must inform the consumer of its decision that the investigation will take more than 20 working days and the reasons for that decision. The provider is required to report to the consumer again by 22 November and thereafter on the 22nd of every calendar month until the investigation has been completed.

Note: This information is for educational purposes only, and is not for the purpose of providing legal advice. If you need advice on a specific problem or issue, we recommend that you obtain legal advice.