



HEALTH & DISABILITY COMMISSIONER
TE TOIHAU HAUORA, HAUĀTANGA

Guide for Providers

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

It is unsettling to be on the receiving end of a complaint from a patient. For many professionals, it is very upsetting to be accused of providing a substandard service.

Feelings of anger and fear of the potential consequences of the complaint are a natural response, together with uncertainty about the investigation process.

Although the Code of Health and Disability Services Consumers' Rights (the Code) focuses on consumers' rights, as a provider facing a Health and Disability Commissioner (HDC) investigation, you also have rights. The Health and Disability Commissioner Act 1994 (the Act) includes facilitation of "the fair, simple, speedy, and efficient resolution of complaints relating to infringements of [consumers'] rights". The Act specifically requires the Commissioner to act fairly when conducting an investigation.

Purpose of investigation

An investigation is undertaken to find out whether there has been a breach of a consumer's rights under the Code. Its purpose is also to identify the lessons that can be learned from the events, and any follow-up action, including recommendations on how services can be improved.

Notification

Providers under investigation must be told of the intention to investigate, and the details of the complaint or subject matter of the investigation. You will also be sent a copy of the written complaint. You will be invited to make a written response, which is usually required within 15 days. 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 when deciding how to deal with the complaint.

Evidence gathering

Under the Act, the Commissioner has the power to obtain any information relevant to an investigation. In

the letter notifying you of the investigation, often the Commissioner will set out the information you need to provide, such as a summary of the service provided, clinical notes, relevant internal reports, policies or procedures, or the name of other providers involved. Usually the investigator will also obtain information from other sources, such as hospital records, other providers who treated the patient, or witnesses to the events.

HDC staff are asked to ensure that you are contacted every 10 weeks to keep you informed of progress on the investigation. However, you may request an update at any time.

After the initial fact gathering, we often request advice from clinical advisors in the relevant field/s. The Commissioner's advisors are highly respected professionals in their field, and in most cases have been recommended by the relevant professional college.

Response to provisional opinion

Once we have all the information, we put it into a report outlining the facts of the case, which will inform the basis of the Commissioner's provisional opinion. If the Commissioner forms a provisional opinion that the Code was breached, you are entitled to a reasonable opportunity to respond before the opinion is finalised. Usually we send a cover letter with the provisional opinion inviting comment on the findings and recommendations, normally to be provided within 15 working days of receipt. This is your chance to correct any factual errors and to respond to the Commissioner's provisional view. In accordance with HDC's naming policy, all parties will be able to comment on any proposed naming at this point.

In preparing the Commissioner's final report, your response to the provisional findings and recommendations will be considered carefully.

The complainant will also be given an opportunity to review the provisional opinion.

The final report will contain a fair and accurate summary of your response.

Commissioner's final report

Ultimately, the Commissioner will form an opinion, on the basis of all the evidence gathered, on whether a consumer's rights have been breached.

The Commissioner's report will set out all 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 state whether the provider breached the Code and outline the reasons for the decision.

The Commissioner may make a number of recommendations in this report, including specific recommendations that the provider should apologise to the complainant, and about how the provider could improve their practice.

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

Director of Proceedings

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

The Director of Proceedings will then decide whether to take action against the provider, before a disciplinary tribunal and/or before the Human Rights Review Tribunal.

After the final report

The final report is sent to the complainant and the provider, and to any other relevant people or bodies. Where the Commissioner has found a breach of the Code, usually an anonymised copy of the report is placed on the HDC website for educational purposes.

Follow-up of recommendations

When an investigation ends, the Commissioner's recommendations are followed up to ensure that the appropriate changes occur.

Frequently asked questions

Will I get the chance to tell my side of the story?

Yes. You will be asked for a written description of your version of events. You can tell the Commissioner's staff if your actions were influenced by resource constraints or the clinical circumstances of the consumer.

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 providers and wide-ranging issues, and can therefore take longer. We will keep you updated on progress at least every 10 weeks. Please note that these timelines are in addition to the time taken to complete an initial assessment of the complaint before the decision to investigate formally.

Will I need a lawyer?

This is something you will have to decide for yourself. It may help to discuss the complaint with your colleagues. Your professional body may be able 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 Ombudsman and/or the High Court can review the way the complaint was investigated, to ensure that everyone has been treated fairly.

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



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Information in e text is available on our website.