

---

## Fertility Services Provider

---

### Report on Opinion - Case 98HDC13091

---

**Complaint** The Commissioner received a complaint about the services provided by a fertility clinic ("the Provider"). The complaint is that:

- *The consumer commenced a course of Danazol in mid-August 1996. The consumer understood that at the completion of a 12 month course on the medication she would be placed on the fertility programme with the Provider.*
- *The Provider wrote to the consumer in early October 1996 and mid-September 1997 informing her that she was on the top of the waiting list for fertility treatment. The consumer did not receive any information about why her treatment did not proceed.*
- *In early January 1998 the consumer was informed that she was to receive fertility treatment from a different Provider in another city. The consumer did not receive prior information about this change or sign a consent form for her file to be transferred.*
- *The Provider resumed the consumer's care about March 1998. At that time the consumer claims that she was informed that she was on the bottom of the waiting list and would have to wait three to five years for fertility treatment. The reason the consumer was given for the delay was that she had changed her address. The consumer was not advised that changing her contact details would alter her position on the waiting list.*

---

**Investigation** The Commissioner received the complaint on 27 March 1998 and an investigation was carried out. Information was received from:

The Consumer  
The Manager, Provider  
The Clinical Director, Provider  
The Health Funding Authority

Correspondence between the Health Funding Authority and the Provider and the consumer was also obtained and viewed.

---

*Continued on next page*

---

## Fertility Services Provider

---

### Report on Opinion - Case 98HDC13091, continued

---

**Outcome of Investigation**

In mid-April 1995 the consumer was placed on the waiting list for fertility treatment by the Provider. In late May 1995 the Provider wrote to the consumer at her home address confirming her placement on the waiting list and advising her of a two year wait for fertility treatment and the cost of treatment.

In mid-August 1996 the consumer commenced a course of Danazol for the treatment for endometriosis. She understood that she would need to take Danazol for 12 months and would commence fertility treatment one month after she completed the Danazol. The Provider has denied that they informed the consumer that she would receive fertility treatment when she had completed the Danazol.

In early October 1996 the Provider notified the consumer that she was at the top of the waiting list and sent her an activation pack in a letter addressed to the same home address as previously used. The Provider's records contain a hand-written notation that this address is incorrect. The consumer contacted the Provider by telephone to advise them that she had not completed the 12 month course of Danazol.

The following day, upon learning of the consumer's receipt of the "activation" pack, an Obstetrician, from the local Crown Health Enterprise wrote to the Provider's Clinical Director. The Obstetrician informed the Clinical Director that the consumer was taking Danazol. The consumer's fertility treatment did not proceed.

In mid-January 1997 the Provider sent a letter to the consumer to advise her that she was placed in an "activation" group (a prerequisite for fertility treatment). The "activation" session was to be held in mid-February 1997 at a regional Hospital. The letter was addressed to the consumer at a new home address. It was neither received by the consumer nor returned to the Provider. The consumer has never lived at that address. It is the address of her partner's sister. The consumer advises that she did not give this address to the Provider, though on one occasion, she was taken to hospital by her partner's sister. She states that this is the only explanation for this address being held by the Provider. The Provider records do not indicate whether the consumer attended or responded to the invitation. The Provider did not make up a chart for the "activation" and did not "move" the consumer from the waiting list to the "activation" category.

---

*Continued on next page*

---

## Fertility Services Provider

---

### Report on Opinion - Case 98HDC13091, continued

---

**Outcome of  
Investigation,  
*continued***

In mid-August 1997 the Obstetrician wrote to the Clinical Director advising him that the consumer had completed her course of Danazol and requesting fertility treatment for the consumer. In mid-September 1997 the Provider confirmed that the consumer was on the waiting list and hoped to be able to let her know when treatment would commence within the next few months. This letter was addressed to the consumer at her current address.

Late in September 1997 the Provider sent the waiting list data to the regional Health Funding Authority. The HFA was to inform all on the waiting list of a change of provider and arrange for transfer of medical records to the new provider. The Provider gave the address of the consumer as that of her partner's sister, in spite of the correspondence earlier that month by the Provider to the consumer at her correct address.

In a letter dated early January 1998, in response to a telephone enquiry, the Provider informed the consumer that fertility services would thereafter be provided by a different fertility clinic in another city. She was advised that she would be approached by the HFA for consent to forward her records to that city. The HFA wrote to the consumer at the incorrect address provided to them by the Provider (that of her partner's sister) in mid-January 1998 but the letter was neither received by the consumer nor returned to the HFA.

The Commissioner sought clarification of the process used by the HFA to notify people on the waiting list of the change to a new provider. The Commissioner also sought confirmation that the consumer was on the waiting list and that she had been sent written notification of the change.

---

*Continued on next page*

---

## Fertility Services Provider

---

### Report on Opinion - Case 98HDC13091, continued

---

**Outcome of Investigation, continued**

The HFA advised that:

*“in August 1997, [...] a division of the Transitional Health Authority undertook a review of its purchasing of Artificial Reproductive Technology Services (ATR)...[the Provider was] chosen as the preferred provider... commencing from 1 January 1998.*

*In consultation with the previous provider, [the Provider] and [the second fertility services provider] developed the following transition plan.*

*Four distinct client groups were identified based on when they were referred to [the Provider] and whether they had commenced treatment or not. [The Provider] identified all clients on their waiting lists and categorised them into the appropriate group. All clients within each group were sent a letter by [the CHE] which advised them of the change to the new provider, what they needed to do in order to transfer to the new provider, and if they elected to transfer time frames in which they needed to reply and consent forms which would allow their personal information and/or any reproductive material to go to [the second provider].*

*Consents were sent directly to [the second provider] who provided weekly lists of responses until the agreed close off dates. Clients who did not respond were sent one and in some cases two further letters advising of the change and how to arrange for their transfer.*

*Any undelivered letters were returned to [the CHE]. In each instance we contacted the Post Office to establish if a forwarding address had been notified and checked electoral rolls. If we could not locate the people at all a letter was sent to the referring agent, either their general practitioner or specialist advising of the change of provider and that we had not been able to contact their patient(s).*

*[The consumer] was identified by [the Provider] as being on their waiting lists. She was placed in the appropriate category and was sent a letter by us [in mid-January] 1998.”*

---

*Continued on next page*

---

## Fertility Services Provider

---

### Report on Opinion - Case 98HDC13091, continued

---

**Outcome of  
Investigation,  
*continued***

Using the process described by the HFA the consumer should have been sent at least one further follow up letter from the HFA. However, after having sent the first letter, the HFA were advised by the Provider that the consumer had since moved to another city. Consumers living in that city have health services purchased by a different branch of the Health Funding Authority.

In early February 1998 the Provider's administration clerk actioned a request from the first branch of the HFA to put the consumer on waiting list of the second branch of the HFA. The Provider can confirm that the consumer was placed on that waiting list based on an original referral date of mid-April 1995. There was no reference to the consumer being placed on the bottom of the waiting list. The Provider is able to confirm that being on the waiting list for the second branch of the HFA may entail a longer wait for treatment than if the consumer had remained on the first branch's waiting list, as the two funding authorities have adopted different purchasing patterns and there are different rates of referral between the two areas.

---

*Continued on next page*

---

## Fertility Services Provider

---

### Report on Opinion – Case 98HDC13091, continued

---

**Code of  
Health and  
Disability  
Services  
Consumers'  
Rights**

*RIGHT 4*

*Right to Services of an Appropriate Standard*

- 5) *Every consumer has the right to co-operation among providers to ensure quality and continuity of services.*

*RIGHT 6*

*Right to be fully informed*

- 1) *Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including -*
- a) An explanation of his or her condition; and*
  - b) An explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; and*
  - c) Advice of the estimated time within which the services will be provided; and*
  - d) Notification of any proposed participation in teaching or research, including whether the research requires and has received ethical approval; and*
  - e) Any other information required by legal, professional, ethical, and other relevant standards; and*
  - f) The results of tests; and*
  - g) The results of procedures.*

---

*Continued on next page*

---

## Fertility Services Provider

---

### Report on Opinion – Case 98HDC13091, continued

---

**Opinion:**  
**No Breach**

**Right 4(5)**

In my opinion the Provider did not breach Right 4(5) of the Code of Health and Disability Services Consumers' Rights in respect of placing the consumer's name on the waiting list.

The consumer believed that at the completion of 12 months of Danazol she would receive fertility treatment. The Provider is unable to provide this guarantee. The consumer was placed on the waiting list in early October 1996 but had not completed the 12 month course of Danazol. The Provider wrote to the consumer at the first address in January 1997 inviting her to attend the "Activation" session in preparation for her treatment. The address was incorrect and she did not receive the letter nor it was not returned to the Provider. However, in my opinion it was reasonable for the Provider to believe that the address was correct at the time that the letter was sent.

The Provider did not have a follow-up system for clients who did not respond to their correspondence, and neither did they contact the Obstetrician, with whom they earlier been in contact.

**Right 6(1)**

In my opinion the Provider did not breach Right 6(1) of the Code of Health and Disability Services Consumers' Rights.

The first branch of the HFA changed the funding arrangements for fertility treatment, which was beyond the Provider's control. Nevertheless the Provider worked co-operatively with the first branch of the HFA to ensure the consumer did not lose her place on the waiting list and she would receive appropriate treatment. The first branch of the HFA assumed responsibility for informing those on the waiting list, obtaining consent and arranging for the transfer of records. The HFA wrote to the consumer and intended to follow up with several other letters as well as writing to her general practitioner. When the consumer moved to a new city the Provider resumed responsibility for communicating with her and placing her on the waiting list.

The consumer's original date for seeking fertility treatment was the date used to prioritise treatment, and the consumer has not been disadvantaged by the mix-up in addresses in receiving treatment.

---

*Continued on next page*

---

## Fertility Services Provider

---

### Report on Opinion – Case 98HDC13091, continued

---

**Opinion:  
Breach** In my opinion the Provider breached Right 4(5) of the Code of Health and Disability Services Consumers' Rights in respect of providing the consumer's address details to the first Health Funding Authority.

The Provider had an obligation to keep consumer's records and details accurate and up to date. While the consumer did have some address changes, these changes were not unusual. The Provider obtained the first address, which was an incorrect address for the consumer, but this was reasonable in the circumstances when it was obtained. However, when the consumer advised the Provider of her address change, this change should have been made in their records. The letter addressed to the consumer in mid-September would have led the consumer to believe that this had occurred. By providing the wrong address to the first branch of the HFA subsequently, the Provider interfered with the ability of the HFA to provide continuity of services.

---

**Future  
Actions**

I recommend that the Provider take the following actions:

- Apologise to the consumer for the breach of the Code. This apology is to be sent to the Commissioner, who will forward it to the consumer.
- Copy all correspondence to the consumer and the general practitioner or any hospital or private specialist attending the consumer. The Provider placed undue reliance on the return of correspondence and should ensure the consumer's general practitioner is kept informed.
- Introduce a system of record keeping where all changes are documented and include the source of the information and the date, time and the staff member making the change.

The Provider has implemented these recommendations.

---