

As there are concerns and problems with the way the HDC handles complaints, I think we need another way to have complaints assessed, reviewed and “No Further Action” complaints reopened. There is no way of knowing if these have been assessed correctly and justice was done. Older complaints also need to have the chance for reassessment or appeal as there may be some problems going back over the past 10 years.

Consumers need the option of talking face to face with the HDC when they have a complaint. All other witnesses must also be heard and responded to. Communications such as the “Preliminary” and “Final Decision” letters should be made sympathetically and in good faith, given that the consumer may be a victim suffering from trauma.

Because medical cases are often complex, an expert should typically be involved throughout the process of gathering information. Even if this is difficult for the HDC they must find a suitable medical expert. It can't be left to inhouse staff to make these important evaluations.

The two-week timeframe between the “Preliminary” and “Final Decision” is far too short – give the complainant more time to respond. The “Final Decision” should also show evidence that additional information has been taken into account during the intervening period.

The resources constraints of the HDC are such that cases may not be fully and carefully investigated. They may be required to reach ‘targets’ and stay within the constraints. There may be cases closed No Further Action due to this. The HDC culture and integrity are dependent on the character and competence of the commissioner.

We need a right of appeal. Health justice can't sit entirely within one institution. The decision to review a closed file should not be at the discretion of the HDC. The HDC must be sure that an internal review that is done is with a different commissioner, with a fresh pair of eyes

I understand that a Judicial Review is too costly and difficult and only one or two consumers have tried that pathway.

I believe the Ombudsman mainly looks at HDC procedural fairness, not medical issues. They don't appear to do many HDC reviews at all, as per their statistics. They have only looked into matters when there has been an accumulation of a certain type of complaint, i.e. mesh complaints.

Taking it through the HRRT there is potentially a power imbalance between the consumer and provider. There is very limited medico/legal representation for health consumers in NZ, while the provider has insurance and ample legal representatives available.

There needs to be a way for the consumer to challenge the decision of the HDC. A system with better transparency and one that can hold the HDC to account. The HDC itself can't do this.

However – by lowering the threshold for access to the HRRT and taking the HDC and its decision to the HRRT, the decision can be reviewed. It can also award damages for losses suffered, including injury to feelings, humiliation, and loss of dignity. Justice isn't only about putting things right in the case of errors, so future patients don't get hurt. Its about compensation for hurt to the individual.

For those HDC decisions that went to a Breach Finding, apologies are insufficient – damages should be awarded and punitive redress should be provided to cases of harm, whether physical or psychological, whether direct or indirect. These are victims of wrongdoing and closure is needed for the individual who was harmed.

The HRRT's decision may be appealed to the High Court. If it takes longer to process a complaint then so be it, for most people it is more important to get it right, then the length of time taken.

If large numbers of consumers go to the HRRT because of a lower threshold then you would expect there is a valid reason. **By and large people are not 'frivolous or vexatious' and to consider that as a reason to withhold further pathways to justice is plainly ridiculous.**

Other countries have appeal process that we can consider and follow; Australia, Canada or UK. At the moment the consumer has an under-resourced, somewhat ineffective HDC process. We need to do better than that. **We need to be able to appeal an HDC decision.**