

Formal investigations

This information is for people involved in an HDC complaint that has progressed to a formal investigation.

In a small number of cases, our Commissioner formally investigates a complaint to see whether the **Code of Health and Disability Services Consumers' Rights** (the Code) has been breached. This is a serious step, and the person who made the complaint (the complainant) and the person or organisation who provided the care complained about (the provider) are informed if a formal investigation is initiated.

We appreciate how upsetting it can be to receive care that you feel was not ok. We recommend that complainants seek support from their friends and whānau.

We also understand that it is unsettling to be on the receiving end of a complaint from a patient.

Providers may find it helpful to discuss the complaint with colleagues. The provider's professional body may also be able to help or put the provider in contact with someone who has been through the investigation process. Some health professionals use lawyers, but many do not.

The Health and Disability Commissioner focuses on people's rights and investigates according to the **HDC Act** and administrative law. Providers should seek independent legal advice for more information about these requirements. For an overview of the HDC complaint process for providers, see our webpage **What if a complaint is made about me as a provider?**

HDC works hard to resolve complaints in a fair, timely, and effective way. Unfortunately, our response and complaints management may be delayed due to the huge increase in complaints over the last three years.

Impartial investigation process

The investigation process is impartial. The Commissioner is like a judge, conducting an independent and fair investigation. The Commissioner does not act solely to protect the interests of complainants. Providers also have rights and a chance to be heard and provide information. Provider cooperation and support can help a timely, positive outcome.

Assigning an investigator

An investigator is responsible for the day-to-day aspects of the investigation on behalf of the Commissioner. The investigator outlines the facts, collects the relevant information, and presents this to the Commissioner or delegate (see 'Investigation outcome and Commissioner's report' below). If you have any questions during an investigation, please get in touch with the investigator. We plan to contact you with an update on the progress of your complaint approximately every 10 weeks.

Scope of investigation

When a complaint is investigated formally, the Commissioner identifies the issues involved, which may differ from those raised in the complaint, eg, the focus may be on specific issue/s within the complaint or may take a broader view of the issues raised.

Obtaining relevant information

Generally, an investigation requires the collection of all relevant information from both the person making the complaint and the provider being complained about. This often includes a response to the complaint from the provider. We may also require information from other people, such as caregivers, other providers, people who were present, or ACC.

Providers are almost always sent a copy of the written complaint with an accompanying letter setting out the key points and what the investigation will cover. A written response is required from the provider within 15 days. It is a good idea for the provider to seek support from a peer or colleague at this stage.

Clinical advice

We may need clinical advice on the care provided. Advisors in the same field as the provider complained about help HDC to determine whether the care was appropriate.

Referral to the Advocacy Service

Sometimes, we think the parties may be able to sort out the dispute by agreement. In this case, we may refer the complainant to the **Advocacy Service**.

Advocates help people with their concerns and often sort out issues around communication or misunderstandings.

Investigation outcome and Commissioner's report

Once we have all the relevant information, it is put into a report that outlines the facts of the case. This forms the basis of the Commissioner's provisional opinion on whether the Code has been breached. The provider/organisation is then given the opportunity to review the facts of the case and to provide feedback.

The Commissioner then reviews the responses and finalises the report, detailing the investigation results. The final report is sent to the complainant and the person/organisation the complaint is about. Usually, the final report is also sent to the relevant professional registration bodies, eg, the Medical Council or the Dental Council. The Commissioner may make several recommendations in the report, including specific recommendations about how the person/organisation could improve their practice, and for them to provide an apology. All recommendations are followed up to confirm that they have been carried out appropriately.

Sometimes, an investigation raises concerns about a registered health practitioner's competence. In this case, HDC may recommend that the practitioner's registration authority (eg, the Medical Council) consider reviewing the practitioner's competence.

Applying what we learn

The Commissioner's final report is the end of the investigation. However, we do further work with what we learned from the complaint. We encourage changes to providers' and organisations' practice and broader health and disability systems.

In addition to the provider, HDC can make recommendations to:

- The appropriate authority (eg, a registration body)
- The Ministry of Health
- Other people or organisations, including professional colleges, district health boards, ACC, and consumer and provider groups.

HDC can also notify other agencies or authorities about the outcome of an investigation. If the Commissioner has found a breach of the Code, usually the report is published on our website. This educates and informs providers and the public. We remove names and other identifying features before publication.

How long will the investigation process take?

This depends on the nature of the complaint, how complicated it is (eg, whether it is about several different providers), and how long it takes us to get the information we need. While many investigations take two to three years to complete, some more straightforward ones can be completed in a shorter timeframe. Other investigations are very complicated, involving many providers and wide-ranging issues, and therefore can take longer.

Can I appeal the Commissioner's decision?

Our Commissioner's decision is final and cannot be appealed. However, if you are unhappy with a decision, HDC can conduct an in-house review of the actions and decisions related to the complaint. The Office of the Ombudsman and the High Court can also review how a complaint was investigated to ensure that everyone was treated fairly.

Director of Proceedings

Very rarely, when a provider has been found in breach of the Code, the Commissioner or Deputy Commissioner refers the matter to the **Director of Proceedings**. This step is reserved for the most severe breaches of the Code, and the purpose is to hold the provider/organisation to account. The Director of Proceedings will decide whether to act against the provider before a disciplinary tribunal or the Human Rights Review Tribunal. If this happens to your complaint, you may be asked to be a witness in any further proceedings. The Director of Proceedings will discuss that with you if the need arises.

If the Director of Proceedings declines 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**.