

FREQUENTLY ASKED QUESTIONS

Will I be given the opportunity to tell my side of the story?

Yes. You will be asked for a written description of your version of events. In some cases the investigator will also request a face-to-face interview with you. Tell the Commissioner's staff if your actions were influenced by resource constraints or the clinical circumstances of the consumer.

How long will the investigation process take?

This depends on the nature and complexity of the complaint. While some complaints may be straightforward and able to be completed to report stage within six months, other matters are complex, involving many providers and wide-ranging issues. Such investigations may take more than eighteen months to complete. In any event, we will keep you updated on progress at least every two months.

Will I need a lawyer?

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

AFTER THE FINAL REPORT

The final report is sent to the complainant and the provider, and to any relevant persons or bodies. An anonymised copy of the report will usually be placed on the HDC website for educational purposes. Serious cases may be referred to the Commissioner's Director of Proceedings for disciplinary or civil proceedings.

RECOMMENDATIONS FOLLOW-UP

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

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



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Information in e text is available via our website.



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 an affront to be accused of providing a substandard service. Feelings of shock and anger, and fear of the potential consequences of the complaint are a natural response, together with uncertainty about the process of investigation.

Although the Code of Health and Disability Services Consumers' Rights focuses on consumers' rights, a provider facing a Health and Disability Commissioner (HDC) investigation also has rights. The stated purpose of the HDC Act includes the 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 in the course of an investigation.

Purpose of investigation

An investigation is undertaken to determine whether there has been a breach of the consumer's rights under the Code of Health and Disability Services Consumers' Rights. 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

First, providers under investigation must be informed of the intention to investigate, and of the details of the complaint or the subject matter of the investigation. In practice, providers are almost always sent a copy of a written complaint. The notification letter will set out the key facts that have been alleged and what the investigation will cover. You will then be invited to make a written response, which is usually required within fifteen 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 in deciding how to deal with a complaint.

Evidence gathering

Under the HDC Act the Commissioner has the power to obtain any information relevant to an investigation. In the letter notifying you of the investigation the Commissioner will often set out information you are required to provide, eg, a summary of the service provided, clinical notes, relevant internal reports, policies or procedures, or the name of other providers involved. The investigator will probably also obtain information from other sources such as hospital records, other providers who treated the patient, or witnesses to the events.

Staff are asked to ensure you are also contacted every two months to keep you informed about progress on the investigation. However, you may request an update at any time.

After the initial fact-gathering stage, the next step is usually to request expert advice from a peer who is an independent expert in the relevant field. The Commissioner's advisors are highly respected professionals in their field and, in the majority of cases, have been recommended by the relevant professional College.

Alternative ways of resolving complaints

Sometimes during an investigation it becomes clear that parties may be able to resolve the dispute by agreement. If this is the case the complainant may be referred to advocacy. Advocates act on behalf of the consumer and often facilitate resolution of complaints involving issues of communication or misunderstanding. Alternatively, a formal mediation conference may be called. Mediation offers a structured forum in which to work through issues of concern to the consumer and enables the parties to agree on their own resolution of the complaint.

Response to provisional opinion

In the event that the Commissioner forms a provisional opinion that the Code of Rights was breached, the provider is entitled to a reasonable opportunity to respond before the Commissioner finalises an opinion. Current practice is to send a covering letter with the provisional breach opinion inviting comment on the findings and recommendations, usually within fifteen working days of receipt. This is the provider's opportunity to clarify any factual errors and to respond to the Commissioner's provisional view that the Code of Rights was breached. In accordance with HDC's Naming Policy, all parties will have the opportunity to comment on any proposed naming at this point.

A provider's response to provisional findings and recommendations is carefully considered in preparing the Commissioner's final report. If requested, the provider's written response, or a fair and accurate summary of it, will be appended to the final report.

Commissioner's final report

Ultimately, the Commissioner will form an opinion, on the basis of all the evidence gathered, 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 has breached the Code, and outline the reasons for the decision.