

FREQUENTLY ASKED QUESTIONS

How long will an investigation 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.

Can I have legal representation throughout the investigation process?

If you wish you may seek representation from a lawyer during the investigation process. This would be at your own cost as there is no provision in the legislation for the Commissioner to provide legal representation for complainants. However, legal representation is not necessary and is not sought by the majority of complainants.

What can I expect as a result of an investigation?

If the Commissioner finds that a provider has breached the Code in relation to your care, he or she will often be asked to apologise to you. The Commissioner may also recommend that providers make changes to their practice in order to prevent similar events.

Can I get financial compensation?

The Commissioner does not have the power to order a provider to pay you compensation. In a very small number of cases the Director of Proceedings may seek damages on your behalf before the Human Rights Review Tribunal, but in the vast majority of cases there will be no financial compensation as an outcome of a complaint.

Can I appeal the Commissioner's decision?

There is no right of appeal against the Commissioner's decision. However, the Office of the Ombudsmen and the High Court can review the way in which the Commissioner carried out the investigation to ensure that it was done fairly and legally.

HOW YOUR COMPLAINT IS PROCESSED

Investigator assigned



Letter sent to provider/s



Information gathered



Advice obtained from expert



Possible referral to advocacy or mediation



Report sent to you and to provider for comment



Comments reviewed and report finalised

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 Complainants

Health and Disability
Commissioner's
Investigation Process

The Commissioner has now decided to investigate your complaint. This pamphlet explains the investigation process involved.

Assigning an investigator

An investigator will be assigned to your complaint, if this has not already been done. The investigator is responsible for the day-to-day management of your file and carries out the investigation on behalf of the Commissioner. If you have any queries during the investigation, please contact this investigator.

Impartial investigation process

It is important to understand that the investigation process is impartial. The Commissioner is like a judge, conducting an investigation that is independent and fair to both complainant and provider and, therefore, does not act solely to protect your interests, as would your own solicitor.

Notifying providers

Once we have discussed your complaint with you, and agreed what will be investigated, we must notify the provider of our investigation. The Commissioner decides the matters that are to be investigated and, therefore, the complaint that is notified to the provider may not match your complaint letter word for word.

Obtaining relevant information

Once providers have been notified of a complaint, they are asked to give their side of the story. Often this stage takes some time, as the provider may need to obtain relevant documentation relating to the service that was provided.

When providers are notified of an investigation, they will be asked for any documents considered relevant, eg, medical notes, test results, X-rays or any other information relating to the service you were given. We may also require information from other people, eg, caregivers, other providers, people who were present during the consultation, ACC. It is therefore important that you tell the investigator if you know of anyone who may be able to provide relevant information about your complaint.

The investigator will usually interview you, either over the telephone or in person, and may also interview the provider and other witnesses.

Expert advice

In many cases, the Commissioner will seek advice from an independent expert in the relevant field, to help determine whether the provider's actions were appropriate.

Alternative resolution of your complaint

Sometimes during an investigation it becomes clear that the complaint could be resolved by agreement among the parties. In this situation the Commissioner may refer the complaint to the advocacy service, or to formal mediation. If this happens you will be given more information about these options at the time. However, if you would like to explore these options at this early stage, please contact the investigator assigned to your case.

Commissioner's report

Once all the information has been obtained, this is collated into a report outlining the facts of the case, which will form the basis of the Commissioner's provisional opinion. You will be given the opportunity to review this report and to comment on or add to the facts outlined. The Commissioner will review these responses and then finalise the report, detailing the results of the investigation.

The final report will be sent to you, to the provider, and usually also to the relevant professional registration bodies such as the Medical Council or the Dental Council. The Commissioner may make a number of recommendations in this report, ranging from an apology from the provider, to specific recommendations relating to ways in which the provider could improve his or her practice.

Director of Proceedings

In certain cases involving a serious breach of the Code, the Commissioner may refer the provider to the Director of Proceedings. The Director of Proceedings will then decide whether to take action against the provider, either before a disciplinary tribunal and/or before the Human Rights Review Tribunal. If this happens, you may be asked to be a witness in any court proceedings. That is something the Director of Proceedings will discuss with you if the need arises.