



Claim Review Principles and Guidance

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Approved by: General Manager Historic Claims
Owner: General Manager Historic Claims

Principles that guide our approach to claim reviews

- Claimants have the right to reject an individualised claim assessment offer, and to request a review of their claim.
- The purpose of a review is to check that the individualised claim assessment (“the initial assessment”) aligns with the assessment framework and guidance that is in place at the time of the review.
- Reviews are undertaken in good faith by Historic Claims, with a genuine motivation to change its position should the circumstances of the case warrant it.
- Reviews are completed based on the claimant’s individual concerns about their claim assessment.
- Historic Claims review approach is applied consistently across claims.
- Reviews are undertaken independently from the staff member who completed the initial assessment.

Policy statements

- Settlement offers remain open for claimants to accept until they receive a subsequent offer (where relevant).
- If a claim review results in an outcome which dictates a lower settlement offer than the initial assessment settlement offer, the subsequent settlement offer will not be decreased.
- Where an allegation has been taken into account in the initial assessment and communicated to the claimant as being taken into account, other than amending how the allegation has been categorised, the claim review will not change that position.

Terminology

The term “**claim review**” is used to encompass any reconsideration of an individualised claim assessment after the claimant has been made the settlement offer associated with that claim and requests that the Historic Claims team carry out a review of that claim.

It does not include situations where the initial assessment is updated:

- due to further information or allegations provided by the claimant that were not considered in the initial claim assessment.
- where a clear error is noticed by Historic Claims staff, either before or after the claimant has received the settlement offer from the initial assessment.
- where the claimant (or their lawyer) identifies a clear error after receiving the settlement offer from the initial assessment. These need to be blatant and clear mistakes that Historic Claims can easily identify, rather than being alternative positions or disagreements around matters such as the facts, the legal position,

what the records may say, what the policy of the time was or whether payment has been correctly categorised. For example, clear examples may be where the Historic Claims team have accidentally missed off allegations from the assessment or mistakenly not identified that the inappropriate detention or Bill of Rights Act payment frameworks apply when they do.

Understanding the basis of a claimant's concerns

Before a claim review is undertaken, Historic Claims needs to clearly understand the basis of the claimant's concerns. It may be that providing further explanation to the claimant, based on the existing assessment, can assist in resolving the claimant's concerns. This approach can occur prior to a review being undertaken where appropriate, though the claimant is to be informed of their right to a review.

Types of claim review

A claim review is to be structured around the concerns raised by the claimant about the outcome of their initial individualised claim assessment. A review may include:

- Completing a review of an allegation to ensure the accuracy of the outcome based on all available information. This will usually involve considering allegations not taken into account in the initial assessment but could also include considering the categorisation of an allegation taken into account to check that the type, frequency or severity have been correctly assessed.
- Completing a payment review to ensure that the approved payment is consistent with MSD's payment categories, any payment frameworks in place and other payments approved by the Consistency Panel. This could also include consideration of the '*Guidelines on Discretionary Payments in Historic Claims*' if relevant.
- Incorporating new information not available at the time of the initial assessment such as new allegations or further information provided by the claimant.

Prior to beginning a claim review, it is important that the reviewer plans their approach to the review. The review should focus on those aspects of the claim that the claimant has asked the Historic Claims team to review or is an area of concern for the claimant. Given that the Ministry will not reverse any positions reached in the initial assessment where the allegation has been taken into account, the focus of the review will likely be on allegations not taken into account in the initial assessment.

It may be helpful to use the template in Appendix A as a base document to plan any approach. Reviewers are encouraged to discuss their plan with their team leader or another senior staff member.

Completing a claim review

As each claim review may look slightly different depending on the nature of the claimant's concerns, there is no standardised review template in place. However, there may be components of the claim assessment template that provide a useful structure or alternatively, it may be easier to use a blank word document.

All claim reviews shall include:

- Any background details that are helpful for the Consistency Panel to understand including the endorsed payment for the initial assessment (including any payment framework components).

- An outline of why the claimant has requested a claim review and details of the concerns they would like Historic Claims to consider as part of the review.
- For any allegations that are being reviewed, the staff member should ideally set out:
 - the conclusion from the initial assessment;
 - whether this conclusion aligns with the assessment guidance in place and reflects all available information (including claimant file information and social work policy (if relevant)); and
 - whether any change to the outcome is recommended including the reasons for this change.
- Where a Step 2 is being reviewed, a brand new Step 2 does not need to be completed. It may be sufficient to copy and paste the previous step 2 (or components of it) and add additional sections on new information not considered in the initial assessment (including any further relevant allegations assessed since the initial assessment), any updated analysis and reasoning for why or why not a change is recommended.
- An updated summary of allegations included for the purpose of settlement. Where the recommended outcome of an allegation has been amended from the initial assessment, these should be highlighted.
- An updated payment rationale.

Claim review approval and sign out process

Claim reviews enter the same quality assurance and endorsement processes as per usual individualised assessment approval.

This includes all reviews being submitted to the Consistency Panel for endorsement. This is irrespective of whether changes to the assessment are recommended by the reviewer.

Where changes have been made as a result of the claim review, the claim is considered in its entirety to ensure that the payment recommendation is appropriate, noting that an offer no less than the original settlement offer will be made.

Where a change in settlement offer is endorsed, DCE approval is sought for an amendment to the previously endorsed offer.

Where there is no change in payment, the redress screen for the review in the Historic Claims Application should still be updated. The DCE approval date is to be noted as the same date as the 'endorsed by panel' date with a suggested Tag of "*DCE approval not required as no change to previously approved offer*".

In addition, for any claim that requests a discretionary payment or where the Consistency Panel identifies that the claim is one where the General Manager may consider it appropriate to recommend a discretionary payment, the administrative process noted in the '*Guidelines on Discretionary Payments in Historic Claims*' must be followed.

Approve Claim Review Principles and Guidance

Approve / ~~Decline~~



Linda Hrstich-Meyer

General Manager Historic Claims

6.9.2023

Date

Appendix A

Scenario	Suggested Approach
Concerns about settlement offer	
Claimant disagrees with settlement offer <i>(e.g. offer not reflective of experience / placed in incorrect category or band)</i>	Review of payment recommendation. As part of this review, it may be appropriate to briefly check the severity and frequency of the allegations taken into account to make sure there are no clear errors that may impact payment.
Claimant requests a discretionary payment	
Claimant requests a discretionary payment (e.g. an additional payment to reflect serious potential breaches under the New Zealand Bill of Rights Act 1990)	Review of payment recommendation. Consider 'Guidelines on Discretionary Payments in Historic Claims' and carry out all administrative processes outlined in the guidance. Before considering, please connect with the Historic Claims Strategy team to discuss an approach.
Disagreement about the outcome of one or more specific allegations that have not been taken into account for the purposes of settlement	
Claimant disagrees with outcome of specific allegation - No new information provided by claimant <i>(details of allegation that claimant is concerned about)</i>	Review allegation outcome to ensure that outcome is well rationalised and aligns with assessment guidance and all available information.
Disagreement about the outcome of a Step 2	
Claimant disagrees with outcome of Step 2 - No new information provided by claimant <i>(details of allegation that claimant is concerned about)</i>	Review Step 2 analysis to establish that all relevant information has been considered and that a reasonable conclusion was drawn in the initial assessment. As part of this, a check of the Historic Claims Application should be completed to check that there are no new relevant allegations from other claimants to be included which could impact the outcome.
New information provided to consider	
New information provided by claimant - providing context about the allegation <i>(e.g. further details about perpetrator, circumstances of abuse, frequency or severity)</i>	Review using the assessment threshold it was originally assessed under (i.e. brief assessment or Step 2), taking into account the new information.
Factual error in assessment	
Factual error in assessment <i>(e.g. facts about number of placements incorrect or duration of alleged abuse).</i>	Review possible factual error. Where necessary, the assessment is updated to reflect any amendment required for accuracy.

Disagreement with legal interpretation	
<p>Claimant or their legal representative disagrees with our legal interpretation - no additional facts or information provided.</p> <p><i>(e.g false imprisonment, responsible adult liability).</i></p>	<p>The specific allegation and outcome is reviewed by MSD Legal to confirm the position. The assessment threshold remains unchanged.</p>
New allegation/s made following initial offer	
<p>Claimant makes new allegation of abuse or practice failure (not previously considered in assessment)</p> <p><i>(details of new allegation)</i></p>	<p>Any new allegations (regardless of severity) are assessed in line with assessment guidance in place. It should be clear in the review which allegations are new and these should be highlighted in the experience summary.</p>