



## How to prepare a Step 2 analysis

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Owner: General Manager Historic Claims

*An allegation will be taken into account for the purposes of recommending a settlement offer unless any of the following apply:*

- they meet the criteria for a Step 2 analysis, as outlined below;
- it has not been confirmed that MSD or its predecessors had a responsibility for the claimant at the time of the alleged event;
- we are aware the allegation has been previously reviewed and considered by MSD or another agency (either government or non-government) and there are no factors that indicate it may appropriate for the claim to be reviewed.
- information has been identified in the assessment that points against the allegation<sup>1</sup>.

*Where allegations are of a more serious nature, a Step 2 analysis is required to provide increased rigour around the assessment of these allegations. This enables the Ministry to have a better understanding of the more serious abuse alleged by those who were in care and provides confidence the robustness of the information shared with current care providers, including Oranga Tamariki. It also ensures payment recommendations are fair, consistent and align with past payments.*

Allegations against a responsible adult that involve any of the following require a step 2 analysis:

- moderate (chronic) physical abuse;
- serious physical abuse; and
- moderate and serious sexual abuse.

A step 2 is also required:

- when high levels of inaction are alleged or identified;
- where there is a potential BORA breach or potential false imprisonment, both of which may constitute a higher level of payment; and

The *Definitions sheet* in the Historic Claims Handbook provides further guidance on how to determine whether or not an allegation fits within these criteria.

The types of additional information that may be considered includes:

- other claims made against the alleged abuser;

<sup>1</sup> Refer to MSD Historic Claims Business Process and Guidance for additional guidance on information that may point against an allegation.

- other claims involving allegations about specific providers, programmes or institutions;
- institutional files about residences or providers;
- information held in the alleged perpetrator’s staff or caregiver files;
- other relevant information.
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The following considerations may assist when undertaking a Step 2 analysis of an allegation of abuse:

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- whether documents confirm contact between the person the claimant alleged abused them;
- whether the claimant’s allegations are consistent with information MSD holds about the staff member, caregiver or institution. This may include consideration of other allegations received or documentary information held by MSD
- whether descriptions, modus operandi described align with other known allegations; or
- the certainty of other similar allegations (e.g. criminal convictions or complaints made and investigated at the time).

*The information contained in the Step 2 analysis will depend on the nature of the allegation and the available information considered as part of an assessment. A Step 2 analysis requires consideration of whether, on the basis of the information gathered, it is reasonable for the allegation to be taken into account for the purpose of making a settlement offer. This is a different threshold to that applied to an allegation that does not meet the criteria for a Step 2.*

*Where generally allegations are taken into account unless there is information that points against allegation, the focus of a Step 2 analysis is to consider whether there is information that supports the allegation. Note that despite supporting information being required when a Step 2 assessment is completed, proof to the standard of what a court would need (i.e. the balance of probabilities) is not required.*

### **How to prepare a Step 2 analysis**

After noting the allegation, the Step 2 should clearly set out all the facts relevant to the allegation that have been identified in your research, and the analysis section should lead the reader through a logical consideration of those facts that leads to a well informed and well-articulated conclusion. It should be clear and evident to the reader what information has been considered in the assessment, and demonstrate how the Claims Assessor reached that conclusion<sup>2</sup>.

While each Step 2 is set out depending on the nature of the claim and available information, the below illustrates the type of information which is useful to include:

<b>Section</b>	<b>Type of detail to include</b>
Allegation	A clear description of the issue or event identified by the claimant (or by the Claims Assessor during a review of records). Refer to "Practice guidance – How to identify and write an allegation" for further guidance.

<sup>2</sup> Note that this document is prepared to provide guidance about content only. The structure of a Step 2 analysis will be incorporated into existing assessment documentation as required.

<p>Facts</p>	<ul style="list-style-type: none"> <li>• Relevant placement dates</li> <li>• Status</li> <li>• Set out any relevant policy requirement and/or legislation that relates to the allegation, based on the relevant time period.</li> </ul> <p><i>For allegations of abuse</i></p> <ul style="list-style-type: none"> <li>• Confirmation that an alleged abuser was employed at the relevant placement / confirmed as a caregiver.</li> <li>• Information in records which confirms an investigation about the allegation at the time, and the outcome of this investigation.</li> <li>• Records which provide details relevant to the allegation (e.g. disclosure of abuse at the time).</li> <li>• Other allegations of the same nature made by other claimants. Where the alleged abuser is named, for each similar allegation made against that person you should record: <ul style="list-style-type: none"> <li>❖ the allegation as described by the claimant</li> <li>❖ what threshold the claim was assessed under (e.g. brief assessment such as the Ministry’s Two Path Approach, comprehensive) as well as the outcome and brief explanation of the assessment. These factors make a difference to how the information is weighed up.</li> </ul> </li> <li>• Where the alleged abuser is not named, identify other similar allegations relating to the same place and time period and record similar information as above.</li> <li>• Regardless of how past claims outcomes have been reflected in past documents, in a claim assessment the wording used should be “taken into account/not taken into account for the purpose of settlement”.</li> </ul> <p><i>For inaction</i></p> <ul style="list-style-type: none"> <li>• Factual details from the claimant’s records which are relevant to the nature of the inaction (e.g. if the allegation relates to a lack of visits from a social worker, document the dates evident in records of any social work visits).</li> <li>• Information from records about the alleged abuse the inaction contributed to.</li> </ul>
<p>Analysis</p>	<p>The analysis is where you show your thinking, based on the relevant facts available and references the additional information you have considered when forming your conclusion. Think about how strong the factual information is, and identify the factors which you have balanced against each other when reaching your conclusion. The analysis should generally not introduce new factual information.</p> <p>It is important to be clear about what is factual information and what is opinion. Opinion has its place in analysis, though it must be based on available factual information (i.e. records). The analysis outlines the basis for how you have reached the conclusion; it should be objective, and assumptions should be avoided.</p> <p><i>Responding to high levels of inaction</i></p> <p>In order to determine if there was inaction, insufficient action or inappropriate action that contributed to abuse, then the Step 2 analysis must focus on two factors; any failure on the part of a responsible adult, and whether alleged abuse</p>

	occurred or continued as a result of that failure. The assessment must address both of those areas. When considering the seriousness of the inaction, the duration of the abuse considered can only commence from the time of the failure.
Conclusion	Clearly articulate your position that "Based on the above analysis, I recommend that this allegation is / is not taken into account for the purposes of settlement".

## Structuring a Step 2

Generally, the above structure of allegation, facts, analysis and conclusion will support you to logically lay out your assessment. In some instances, the use of sub-headers and bullet points can help to structure a Step 2 analysis. Use your judgement in determining whether a piece of information fits better within the facts or analysis section.

Focus on the specific allegation that the Step 2 is being completed for, rather than the entire care experience. Generally, only one allegation is responded to within a Step 2 but there may be cases where the same information is being used to support multiple allegations and therefore it may make sense to only carry out one Step 2 assessment (though clearly reflecting the conclusion drawn about each allegation). Include only information which is relevant and contributes to the assessment of that specific allegation.

You are aiming to strike the balance in providing the relevant information that supports the reader to understand how you reached your conclusion, while avoiding details of the claimant's care journey that are not relevant to that particular allegation.

## Referencing sources

In preparing to assess a Step 2 allegation, consider the types of records that are necessary to search for and review. Where staff members or caregivers are named, ensure a file search is carried out to identify whether files exist for them. Likewise, for files specific to a residence, Family Home, NGO or other placement.

It is then important to show in your assessment what available sources you have checked (e.g. Historic Claims Application, EDRMS, TRIM and/or printed CYRAS record) and reference when a piece of information is being relied on in your assessment.

Where identifying a lack of supporting information, instead of "*Historic Claims has not received...*" note that this is "*at the time of the assessment*", or "*based on the writer's search of the "x" records*", as new information is received by Historic Claims every day.

Refer to "*Practice guidance – Information sources for assessment*" for guidance on information sources that can be accessed by Historic Claims which will support your Step 2 analysis.

## Reaching a lower severity level than the claimant's allegation

Where a Step 2 has been completed, and insufficient information exists to take into account a particularly serious event, but information does exist to take into account some degree of abuse or inaction, it is appropriate to reach a lower severity in your conclusion. This is still prepared as a Step 2 analysis; the only difference being that the outcome is a lower severity (Example one below illustrates this).

## “Neutral” information in an assessment

While some information may act to support an allegation (e.g. other claims made against the alleged abuser), and some information may act to point against an allegation (e.g. clear information that a named staff member or caregiver was not present at the time of the alleged abuse), some information is “neutral”; that is, it neither supports nor disputes a particular allegation.

A lack of supporting information does not act to point against an allegation; it purely means that insufficient information exists to take an allegation into account for the purposes of settlement.

## Legal advice

Where legal advice has been sought in relation to a potential BORA breach or other legal issue, reflect this legal advice succinctly and clearly in your analysis. This is a good example of where a sub-header may assist in how the Step 2 analysis is structured.

**Examples:** Three examples are provided below. Note that every allegation is different, and the facts and information known in any particular case may require a more or less extensive document.

### Example one: STEP 2 ANALYSIS OF AN ALLEGATION OF ABUSE – TAKEN INTO ACCOUNT

#### Allegation

Brendan has alleged that while placed at Hamilton Boys Home, staff member Mr P<sup>3</sup> kicked him until he was “*black and blue*” every day. Brendan recalls on two occasions “*coming to*” after two particularly bad assaults, and believes that he was knocked unconscious on these occasions.

#### Facts

- Records confirm that Brendan was placed at Hamilton Boys Home from 1 August 1978 to 8 September 1978 (five weeks duration).
- During that time he was remanded in the custody of the Director-General under section 43(1) of the Children and Young Persons Act, 1974.
- Institutional records of the home confirm that Mr P was employed as a staff member during this period.
- Three other claimants (Mr A, Mr B and Mr C) have made allegations of physical abuse against the alleged perpetrator, Mr P.
  - Mr A alleged that Mr P “*hit and smacked*” him regularly during a two month placement. This claim was assessed under the Ministry’s Two Path Approach, and the allegation was taken into account for the purposes of settlement.
  - Mr B alleged that Mr P hit him on one occasion during his placement at Hamilton Boys’ Home. This claim was assessed under the Ministry’s Two Path Approach, and the allegation was taken into account for the purposes of settlement.
  - Mr C alleged that on several occasions during his placement at Hamilton Boys’ Home, he was physically assaulted by a staff member, described as “*pushing, shoving and hitting*”. This allegation was assessed under a detailed assessment, which concluded to a reasonable degree of certainty that the alleged staff member was Mr P. The conclusion of the

<sup>3</sup> These are fictional examples. For the purpose of this practice guidance, surnames of either fictional claimants or alleged perpetrators are not used to prevent a person from incorrectly identifying themselves in drafted examples in the event they coincidentally share the same name.

assessment was that it was reasonable to take this allegation into account.

- A file note, dated 6 August 1978, refers to a phone call from Brendan's mother to his field social worker, which noted "*Brandan's mother called. Worried about him. He isn't happy at the Boys' Home*".
- A file note, dated 4 November 1978, refers to a conversation between Brendan and his social worker, who noted "*I asked him about his time at Hamilton Boys...he doesn't want to go back there, but he wouldn't tell me why*".

### **Analysis**

Records confirm that the alleged perpetrator was present at the time of Brendan's placement, and has been the subject of three other allegations, though these claimants did not allege abuse as serious as what Brendan does. Records also indicate that on two occasions, Brendan expressed some form of unhappiness in his placement, which may indicate that he was subjected to mistreatment there.

It is reasonable to conclude for the purposes of settlement, based on the information gathered, that Brendan was subjected to physical abuse by Mr P. However, there is insufficient information to conclude the serious level of abuse that took place as described by Brendan.

### **Conclusion**

Based on the above analysis, I recommend that moderate physical abuse over a five week placement is taken into account for the purposes of settlement.

## **Example two: STEP 2 ANALYSIS OF AN ALLEGATION OF ABUSE – NOT TAKEN INTO ACCOUNT**

### **Allegation**

Kelly has alleged that she was raped by a staff member at Weymouth. She cannot recall his name but described him as "*a big guy.....with facial hair, and smelt really bad*". She said that this happened when she was placed in secure.

### **Facts**

- Records show that Kelly was in Weymouth for a 4 month period (4 March 1986 – 6 July 1986). She was under a guardianship order.
- Secure records confirm that Kelly spent a total of three days in secure on two occasions (one night on 6 March 1986, and two nights from 5 June – 6 June 1986).
- A review of EDRMS folder "*Weymouth Girls Home later known as Northern Residential Centre*" has not identified any other allegations of sexual abuse during 1986 or the surrounding years.
- A review of allegations in the Application has identified three allegations of sexual abuse against named staff members.
- I have confirmed from a TRIM search of these staff member's HR files that two of these staff members were not employed at the time of Kelly's placement at Weymouth.
- One staff member was, and a picture of his driver's licence on file show him to be a large person with facial hair. The allegation made in relation to this staff member was not taken into account for the purpose of settlement due to insufficient information, and also related to a serious sexual assault of a young person in secure.

### **Analysis**

Some information found may indicate that Kelly's alleged perpetrator was the same alleged perpetrator as another claimant has made an allegation about. However, it is not possible to

confirm this and with no available information on Kelly's personal records about this alleged assault, this available information is insufficient to take this allegation into account.

### **Conclusion**

Based on the above analysis, I recommend that this allegation is not taken into account for the purposes of settlement.

## **Example three: STEP 2 ANALYSIS OF HIGH LEVELS OF INACTION - TAKEN INTO ACCOUNT**

### **Allegation**

Joshua has stated that during his time in care, there was a period of four months where he was essentially living on the streets "*I was a ratbag....I took off from Kingslea and I thought that no one really knew where I was*". Joshua has recently received his records, and believes that his social worker knew that he was living with a man who was a known sex offender during this time, though some of the information on file has been blacked out. He states "*the guy was messing with me from the minute I got there.....he gave me drugs and had sex with me....I was so out of it I didn't really know what was happening...I never realised DSW knew I was there with him*".

### **Facts**

- Records confirm that Joshua absconded from Kingslea during an off site visit on 8 November 1982. He was located by Police in May 1984 after offending, and was placed back at Kingslea. During this period, Joshua was the subject of a guardianship order.
- Records show that initial attempts were made to locate Joshua, including; reporting him missing to the Police (9 November 1982), searching known spots in the town centre where runaways were known to congregate (on 12 and 15 November 1982), and checking with Joshua's parents and several friends about whether he had made contact with them.
- There are no records for an 18 month period from 15 November 1982 until 8 May 1984, when a social work file note states "*I saw Mike (Joshua's friend) in passing, and asked if he knew where he was staying at....he said Joshua had been at Mr X's home but was unsure whether he was still there. Note to supervisor – Mr X's children were removed from him years back....sexual offending. Can we please discuss in supervision. Police might be interested too*".
- There is no information available in records to reflect any further action taken until May 1984 when Joshua was readmitted to Kingslea as a result of offending.
- A supervision note, dated 16 May 1984, notes "*Fiona. As discussed – allocated to you. Key worker on long term sick leave. Please pick up in her absence. You will need to see Joshua at Kingslea. Please update court report for review date in June*".
- I have confirmed, from a review of Mr X's children's records, that they were removed from his care in 1975 after he sexually abused them. No information is available as to whether Mr X was criminally prosecuted.

### **Analysis**

Records confirm that DSW were on notice from 8 January 1983 that Joshua had been (and may have still been) staying with Mr X, who was known to the social worker as a person of concern. Although records show an initial plan to consult with supervisor to determine a way forward, there is no information in records of follow up in relation to this matter. Contextually, from records, it is possible that the social worker's sick leave may have resulted in this issue failing to be managed.


Joshua has alleged being sexually assaulted by this person, and there is available information to support this allegation, based on Mr X's documented history of sexual abuse against his own children with DSW.

Joshua was a ward of the state at the time, and although he essentially "placed himself" with the alleged perpetrator, DSW were responsible for responding to the identified risk when they received information relating to him staying with Mr X. As above, there is no record that there was any substantive investigation or response. Such a failure constitutes a practice failure.

**Conclusion**

Based on the above analysis, I recommend that high levels of inaction is taken into account, to reflect what the documents indicate as DSWs failure in following up concerns about Joshua's safety which contributed to ongoing serious sexual abuse over an 18 month period from 8 January 1983 to May 1984.

**Approve** practice guidance – How to prepare a Step 2 analysis

  
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General Manager Historic Claims

Approve/~~Decline~~

26.10.2021  
Date