



Second claims or revisited claims policy guidance

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

Policy guidance

This policy guidance outlines the requirements for registering 'second claims' or agreeing to 'revisit' claims as well as general guidance about assessing these claims.

Definitions

For the purposes of this policy, the following terms are defined as:

'second claim' - A further claim lodged by the claimant after the claimant has already resolved their original claim with the Ministry in which they received a settlement or an ex gratia payment. The further claim includes new allegations not previously assessed.

'revisited claim' - A request by the claimant to reconsider allegations not taken into account for the purposes of settlement in a claim which has been resolved with the Ministry in which the claimant received a settlement or an ex gratia payment.

These definitions do not include claims that have been closed for reasons such as the claimant losing contact with the Ministry or deciding not to progress their claim. It also does not include claims where the Ministry declined the claim and made no payment (i.e. the claim has not been resolved). For these situations, the claim can be re-opened.

Background and context for this policy

The Ministry provides a claims process where the general expectation is that each claimant brings only one claim against the Ministry relating to their time in care and any resolution currently agreed upon is in 'full and final settlement'. All claimants are asked to sign a settlement agreement which includes a clause stating that the agreement is in 'full and final settlement' and the claimant agrees not to bring any further complaint or proceedings against the Ministry relating to the subject matter of the claim. Claimants are encouraged to obtain legal advice before signing to ensure they understand the effects of the agreement.

In the past, the Ministry has agreed to revisit some claims which were not initially accepted and closed without payment being made, especially when the claimant had not already had their claim reviewed or did not have legal representation at the time, but later sought legal representation. However, the Ministry has generally not agreed to later revisit specific

allegations of a claim that were not taken into account for the purposes of settlement where a claimant has already received payment.

However, there may be the occasional situation where it is appropriate to consider a request for a second claim to be registered or for the Ministry to revisit a claim where a payment has already been made.

The permitting of second claims or revisiting a claim is consistent with Principle 3 of the Crown Resolution Strategy which states:

If claimants become aware of additional material information or circumstances that were not considered by the Crown at that time, the Crown may consider that new information and whether any additional response should be made.

Though, the Strategy is also clear that settlement will generally be full and final (see Principle 2), so the registration of a second claim or agreement to revisit a claim must be carefully considered.

Requests to register a second claim

On receiving any request to register a second claim, Historic Claims staff should try to clarify why any additional allegations were not raised originally. This will assist decision-making on whether to register a second claim.

When considering a request to register a second claim, the following factors are likely to be relevant:

- a) The reasons for the request – The following are examples of reasons which may factor into a decision to register a second claim, but are not limited to these:
 - (i) The claimant may not have felt able to disclose the abuse during the first claim (e.g. sexual abuse that they have never disclosed to anyone before, but subsequent counselling helped bring the claimant to a place where they could share this with the Ministry);
 - (ii) The claimant may not have understood what concerns were in scope of the Ministry's claims process first time around and therefore not disclosed that concern.
- b) Has the claimant entered into a 'full and final' settlement with the Ministry? ^{1 2}
- c) Did the claimant obtain legal advice (or were they encouraged to do so) at the time their first claim was resolved?
- d) Has the claimant progressed their request for a second claim in a timely manner since the reasons have become known to them?
- e) Has the Ministry made any commitments to the claimant that should be honoured?

¹ This includes claimants who resolved their claim under the Ministry's Two Path Approach as claimants were asked to sign paperwork confirming that they were accepting the offer in "full and final settlement".

² If the claimant received an ex-gratia payment (which is not in full and final settlement) for their first claim, there is likely to be more scope for considering a second claim.

- f) Are there reasons beyond the Ministry's control that might necessitate the registration of a second claim – for example, Court proceedings being filed and the Court issuing timetabling steps that the Ministry must respond to.
- g) Would the claimant be significantly disadvantaged if a second claim is not approved?

Requests to revisit a claim

When considering a request to revisit a claim (or allegations within a claim), the following factors are likely to be relevant:

- a) The reasons for the request – The following are examples of reasons which may factor into a decision to revisit a claim, but are not limited to these:
 - (i) The Ministry may have found a missing file that contains relevant material information;
 - (ii) Is there new material information that was not available at the time of the previous claim?³
- b) Has the claimant entered into a "full and final settlement" with the Ministry?^{4 5}
- c) Did the claimant obtain legal advice (or were they encouraged to do so) at the time their original claim was resolved?
- d) Has the claim already been reviewed previously?
- e) Are there reasons beyond the Ministry's control that might necessitate revisiting a claim – for example, Court proceedings being filed and the Court issuing timetabling steps that the Ministry must respond to.
- f) Would the claimant be significantly disadvantaged if the request to revisit a claim is not approved?

Approval of request to register a second claim or revisit a claim

For a second claim to be registered or for a claim to be revisited, the General Manager, Historic Claims must be satisfied that there are sufficient reasons to approve the request and that the claimant would be significantly disadvantaged if a second claim is not approved or the claim is not revisited. The staff member making the request should put the reasons in writing to the General Manager for approval and this recommendation and the decision should be saved in the claimant's electronic file.

³ The new material information does not include subsequent allegations about an alleged perpetrator that were made after the claimant's claim was originally assessed. This is a wider Crown issue that needs further discussion and decision amongst Crown agencies.

⁴ This includes claimants who resolved their claim under the Ministry's Two Path Approach as claimants were asked to sign paperwork confirming that they were accepting the offer in "full and final settlement".

⁵ If the claimant received an ex-gratia payment (which is not in full and final settlement) for their first claim, there is likely to be more scope for considering revisiting a claim.

There may be claims where both a second claim is approved as well as revisiting allegations not previously taken into account.

Assessment of second claims or revisited claims

If a second claim is registered, only the new allegations are to be assessed, unless the Ministry has agreed to revisit other allegations. Likewise, if a claim is being revisited, only the allegations that are being revisited are to be reassessed. There may also be situations where it is appropriate to include any further noted practice failures.

All second claims or revisited claims are to be completed as an individualised claims assessment. They are not eligible to receive a rapid payment. This is because second/revisited claims are generally registered for reasons relating to allegations. It is therefore important that the allegations can be considered at an individual level (which a rapid payment does not do).

Principles for payment recommendations

An important principle for Historic Claims is to provide a level of consistency across financial offers to claimants. The assessment process for individualised assessments utilises payment categories to assist in reaching consistent payment recommendations.

In considering a second claim it is important that the principles of fairness and consistency are considered. It is possible that if a second claim was considered in isolation from the previous payment, there could be a level of inconsistency when considering the total payment across similar claims.

Developing payment recommendations

The individual circumstances of a second/revisited claim will be considered on a case by case basis. Though in order to achieve a level of consistency, the following considerations are to be applied in determining payment recommendations for second claims:

- The previous allegations taken into account as part of the first claim and the previous payment made should be considered when recommending any further payment. These should be documented in section 2 of the claims assessment template along with the previous type of assessment (e.g. claims assessment, full case assessment, Two Path Approach) so that decision makers can understand the background to the claim.
- It will usually be appropriate to consider the totality of the allegations (from both the first and second claims) and where these sit within the payment categories when recommending any further payment.
- Although the payment categories are a helpful guide, there may be situations where it will be appropriate to recommend a payment that falls outside of the payment categories where the General Manager would need to exercise their discretion to endorse. This is consistent with the categories being "guidance only".

(For example, if one additional allegation of moderate physical abuse is taken into account in the second claim, but the claimant has already received \$25,000 in their first claim (high Cat 3), the categories would not generally allow payment to move

to Category 4. However, to acknowledge the additional instance of abuse, it may be appropriate to recommend an additional small payment.

- Given the complexity of some of these claims, assistance can be sought from the Strategy, Planning and Reporting team.

For any payments being recommended that are outside the payment category (or the point in the payment category) that the claim is assessed at, the payment will need to be endorsed by the General Manager in-line with any processes in place for claims that require the General Manager to exercise their discretion.

In any DCE approval memo, sufficient context needs to be provided to explain the background to the second or revisited claim and why a further payment is being recommended.

Table 1. Responsibility for matters relating to registration of second claims or requests to revisit claims

Person/Party	Responsibilities
All staff	To identify requests for registration of second claims or to revisit claims where a claimant has already received payment.
Managers Historic Claims	To ensure reasons are recorded for requests to register second claims or to revisit claims and endorse any recommendation to the General Manager for approval.
General Manager	Approves any requests to register second claims or to revisits claims. Owner of the second claims and revisiting claims guidance.

Approve second claims and revisiting claims policy guidance

Approve/~~Decline~~



Linda Hrstich-Meyer

General Manager Historic Claims

26.5.2023

Date