



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

MSD Historic Claims Business Process and Guidance October 2019

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MSD Historic Claims Business Process and Guidance

The MSD Historic Claims team are committed to continually reviewing how we assess and respond to claims to ensure we deliver a service that is consistent and fair, and is mana manaaki; a positive experience every time. As part of this commitment the processes, policies and guidance will be subject to review and amendment over time.

The following process provides guidance for responding to claims. We recognise some claims may benefit from a more individualised approach, including in response to unanticipated issues.

1. Intake

1.1 Direct claims

Direct claims are usually received by phone, email or mail. Claims may also be made, with the consent of the claimant, by a representative/agent. The staff member receiving the claim will work with the person to establish whether or not they meet the Ministry of Social Development's (MSD) eligibility criteria to make a claim. It is appropriate for the staff member receiving the intake information to carry out additional steps (such as requesting files) to determine eligibility.

Where eligibility is confirmed the staff member will:

- ensure that the MSD has sufficient information to register a claim
- provide claimants with information about the claims process and what they can expect, and answer any questions claimants may have
- establish whether claimants have the support they need at this point in the process (e.g. counselling support or other services) and assist where possible
- ask the claimant whether or not they would like to receive a copy of their information held by Oranga Tamariki about their involvement with the State as a child or young person, and at what point in the process they prefer to receive this information
- confirm the claimant's preferred method of subsequent contact (e.g. phone, email, text)
- ensure that prior to any information being gathered from the claimant about their experiences in care that the claimant is advised of who their information may be shared with and why (see Historic Claims Privacy Statement).

1.2 Claims received from a legal representative

Where a claim registration form, Statement of Claim and/or Letter of Offer is received these will be processed and recorded by the Claims Administration Team. The date the claim is registered is the date that the first of any of the above documents is received.

1.3 Eligibility criteria

MSD will register a claim of abuse if:

- the person had been in the care, custody, guardianship, or came to the notice of the Child Welfare Division, the Department of Social Welfare, or Child, Youth and Family **before** 1 April 2017, **and**
- believe they were harmed as a result of abuse or neglect while in care.

Where eligibility is **not** confirmed the staff member will:

- where possible, provide advice to the person about other organisations or services that may be able to assist (e.g. Ministry of Education, Ministry of Health, Faith-based organisations or Accident Compensation Corporation).

1.4 Registering a direct claim

The steps below outline the process that should be followed to register an eligible claim:

- the staff member gathers the information required to complete the claim registration form and ensure all actions taken are documented on the form.
- identify any allegations that relate to an operating Non-Government Organisation (NGO) (see section 5.4).
- the completed claim registration form is emailed to the Historic Claims Admin email inbox so that it can be recorded as a new claim. Once eligibility is confirmed, the date of registration is the date of the claimant's initial contact with MSD where they indicate their intent to register a claim. Where applicable, any request for personal information is recorded.
- the claimant's details are recorded on the interview list.
- an acknowledgment letter is sent to the claimant, along with a copy of the Historic Claim's Privacy Statement.

1.5 Safety checking

A safety check will be completed (to identify any possible current safety risks to children) when a claim is registered by identifying any current staff members or caregivers who are currently employed by Oranga Tamariki or MSD, or who may still be employed by an operating NGO (see section 4).

The outcome of these safety checks may result in referrals to Oranga Tamariki, the Police, other Non-Government Organisations, or other Government Ministries. Safety checks are referred to the Lead Claims Advisor for any relevant referrals to be made, in conjunction with MSD Legal.

1.6 Prioritisation of claims

Claims are allocated for assessment in the chronological order in which they are received in order to ensure fairness and equity across all claimants. Requests made by a claimant

or their representative/agent to have a claim prioritised may be considered in special circumstances and on a case by case basis. Claims that may be considered for prioritisation include:

- claimants who are at high risk of dying before their claim is assessed if prioritisation was not to occur. Supporting information from a claimant's medical practitioner may be required
- risk of suicide (claimants who are at high risk of suicide before their claim is assessed if prioritisation was not to occur). Evidence from a claimant's clinician confirming this risk is required.

2. Provision of personal information

2.1 Prioritisation of request for personal information

Requests for personal information are usually allocated in order of receipt. However as outlined in 1.6 there are exceptions to this. , A claimant or their representative/agent may request access to their personal information at any point during the claims process.

2.2 Acknowledgment of request and preparation for processing

- For each request received, the Claims Administrator completes a file search and requests relevant paper records and downloads and saves any CYRAS¹ records to the S drive. Details of the searches completed and actions taken are recorded in the claimant's EDRMS² folder.
- The Claims Administrator sends an acknowledgement to the requestor (either the claimant or their representative/agent) confirming receipt of the request and timeframe for completion.
- Once the requested paper files are received, these are scanned and saved to the S drive alongside any electronic files that have already been saved.
- Where a record search finds no related records, the Claims Administrator will contact the requestor to gather further information and any additional details that may assist in searching and identifying relevant records.
- Following subsequent searches, if no records can be found the requestor will be advised, and the information request will be closed. In these circumstances a decision will also be required by the Manager Claimant Support and Assessment about how to progress this claim.

¹ CYRAS is Oranga Tamariki's case management system.

² EDRMS is the Ministry of Social Development's electronic, document and records management system

2.3 Personal information request allocated for redaction

Following receipt and scanning of all records the request will be allocated to an Information Coordinator for processing.

The Information Coordinator will:

- check to ensure all expected files are scanned and will create an editor's note
- create working copies of files
- redact information in accordance with the Privacy Act
- submit the completed request for peer review.

The completed request will be peer reviewed by a Senior Information Coordinator or another Information Coordinator. The peer reviewer will record notes of any recommended changes and provide these to the Information Coordinator who completed the request. MSD Legal can also be contacted with specific queries.

The Information Coordinator will then:

- review the feedback provided by the peer reviewer and make necessary changes
- create final redacted copies of files
- contact the claimant (or their representative/agent) to confirm how they want to receive a release (This is not required for legally represented claimants as these will be sent via CITRIX)³
- prepare release/pick-up letters, including printing (if required)
- send via signature courier to a secure place of business (or via CITRIX).

3. Gathering information to support the assessment

3.1 Gathering information from a claimant

In order to assess a person's claim, information needs to be gathered from the claimant about their experience and what they are seeking from MSD. Claimants can provide this information in a variety of ways, depending on their individual preference and circumstances. Options may include:

- meeting with the claimant in person. Note that where a face to face meeting is held, all efforts will be taken to ensure that the claimant is comfortable with the venue (although meetings will not be held in their own home)
- audio visual link (AVL)
- telephone conversations
- in writing
- gathering information from other sources (with the claimant's consent) such as a counsellor or Police

³ CITRIX is a secure "Sharefile" method of information sharing with external agencies and individuals electronically.

- a Letter of Offer and/or Statement of Claim from a legal representative.

Information may be provided by the claimant via a combination of channels. The claimant should be given the time they need to share all of their allegations, at a pace that is comfortable for them.

3.2 Advising claimant of information sharing protocols

Before any information is gathered from the claimant about their experiences in care the claimant should be advised of who information may be shared with and why (see Historic Claim's Privacy Statement). This could include, subject to law, information sharing with Oranga Tamariki, NGOs, other government services or the Police.

4. Safety Checking

4.1 Safety checking information gathered

Safety check requests usually come either from Claims Assessors or MSD Legal staff who receive the information about the allegations in a claim. All safety checking requests will be forwarded to the Historic Claims Admin email inbox. An Information Coordinator will complete the following steps:

- review the relevant document. Record on the safety checking form names and details of staff, caregivers (including those that are or were employed at NGOs)
- where required, undertake checks to confirm the identity of alleged perpetrators by searching the claimant's personal files using the word search tool, checking relevant placement records directly in CYRAS and cross referencing any identifying information with any available staff lists
- for allegations against NGO's see role of Lead Claims Advisor in 4.3 below
- complete checks to confirm whether the alleged perpetrator is a current Oranga Tamariki or MSD staff member by searching the global directory
- record all relevant findings in the safety checking form and Historic Claims workbook and send the completed form to the Lead Claims Advisor to consider the information that has been gathered and determine what recommended steps should be taken (i.e. whether a referral to Oranga Tamariki, Police or an NGO should be made)
- save the safety checking form in the claimant's folder.

Safety checking will be completed at key points of the process (information gathering stage, conclusion of assessment or at any other point that details of alleged perpetrators are established). Names of staff members/caregivers identified, who have not previously been safety checked are emailed to the Historic Claims Admin email inbox to be safety checked.

4.2 Court orders prohibiting disclosures of information

Court orders prohibit some disclosures of information in claims that are **filed** with the Court. Breach of these orders could constitute contempt of Court.

If the intention is to make a safety referral in relation to an allegation raised in a claim filed in Court engagement with MSD Legal is required prior to the referral being made. MSD Legal are available to provide assistance as needed when making decisions in other cases as required.

4.3 Situations where sharing of information or disclosure may be required

As outlined above, the Lead Claims Advisor or their Manager are responsible for determining whether any referrals should be made as a result of the completed safety checks in accordance with the guidance below, relevant legislation, any Court orders and the Ministry's information sharing agreements and processes.

The following is an outline of when referrals or sharing of information may be considered:

Current Oranga Tamariki staff and caregivers

Where the information gathered indicates that allegations have been made in respect to a current Oranga Tamariki staff member or caregiver the Lead Claims Advisor will consider the nature of the allegations and whether these give rise to potential safety concerns for children involved with Oranga Tamariki.

Potential safety concerns involving NGO staff or caregivers

Where the information gathered indicates that the allegations made may give rise to current safety concerns relating to current staff or caregivers employed by an NGO the Lead Claims Advisor will consider whether referral is required to the NGO to enable them to make an assessment of any potential safety risk.

Information sharing with the New Zealand Police

Where allegations relate to criminal offending the Lead Claims Advisor will consider whether this information should be shared with the Police for the purpose of public safety and the prevention, investigation and detection of offences. For more information on this process see the information sharing schedule between Police and MSD).

Referring care and protection concerns that do not relate to the allegations made as part of a claim

When current care and protection concerns are identified for a child or young person outside of the safety checking process outlined above these concerns are to be reported to Oranga Tamariki as a report of concern in accordance with the Ministry's Child Protection Protocol.

5. Claim Assessment

It is noted upfront that for the purposes of this document the term 'abuse' includes the concept of 'neglect' and that we assess incidents of abuse as opposed to the impact that abuse may have had on claimants' lives.

5.1 Preparation for assessing a claim

Once a claim is allocated, the staff member will complete the following activities:

- prepare a list of the claimant's allegations, and confirm with the claimant or their representative/agent that this list covers all of the allegations they would like MSD to look at as part of the claims process
- identify any allegations that may require additional checks (see section 5.5), including legal review for potential New Zealand Bill of Rights Act 1990 (BORA) breaches. Request additional files required to enable this additional analysis to occur as part of the Claim Assessment
- identify any allegations that relate to an operating NGO (see section 5.4)
- confirm that safety checking has been completed (see section 4).

To support the completion of the Claim Assessment, the Claims Assessor will have the claimant's EDRMS file link complete with a suite of files, a list of confirmed allegations, and the claimant's interview notes and audio (if interview completed). Where applicable, a Statement of Claim and/or a claimant's Letter of Offer may be available. In addition to this, the Claims Assessor will reference:

- policies that guide what allegations are taken into account for the purpose of settlement
- a summary of policies, legislation, manuals and practice guidance that relate to the historical time period and links to full documents
- an explanation of the categories of allegation and definitions of abuse, inaction and inadequate practice (see Appendix 3)
- payment categories and ranges (see Appendix 2).

5.3 Assessment of Claim

The assessment of each allegation included in the claim will be made based on the information held in the personal/family files (including CYRAS records where available) relating to the claimant's involvement with MSD or its predecessors.

The Claims Assessor captures the following information on a Claim Assessment template:

- key dates and decisions relating to the claimant's time in care. This information helps the Claims Assessor understand the role the State played in the claimant's

life at different points, enables the construction of a timeline and assists in providing feedback to the claimant about their time in care,

- for each allegation, information is recorded to assist in determining whether or not the allegation is taken into account for the purpose of settlement. This includes a fact check to confirm that MSD or its predecessors had a responsibility for the claimant at the time of the alleged abuse,
- for each allegation, any information found in the file that supports or points towards the alleged abuse or practice failure having occurred,
- conversely, for each allegation any information that points against the allegation.

The assessment of the claim will also consider any other significant practice failures identified by the Claims Assessor during the review of the claimant's records.

Staff members are to ensure that any information captured above is adequately referenced so that it can be easily identified if further assessment or review is required.

For an allegation to be taken into account for the purposes of recommending a settlement offer it must be determined that it is appropriate to do so in accordance with the guidance in section 6.

5.4 Step 2 - Additional information for particular allegations

Where the allegations are of a more serious nature (including some types of moderate abuse), consideration of additional information provides increased rigour around the assessment of these allegations (See section 6 for more detail). MSD needs to better understand these types of allegations. This will enable MSD to have a better understanding of the more serious abuse alleged by those who were in care, and to provide confidence in the robustness of the information provided to current care providers (including Oranga Tamariki). It also supports MSD to ensure payment recommendations are fair, consistent and align with past payments.

Where the following circumstances are noted at the outset or during the assessment, additional analysis using a Step 2 assessment is completed.

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

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

A Step 2 analysis is also required:

- when high levels of inaction are alleged or identified.

Refer to the Definitions sheet (Appendix 3) for further guidance on how to determine whether or not an allegation fits within these criteria and descriptions on who 'responsible adults' are and what is meant by 'inaction'.

The types of additional information that may be considered includes:

- review of other claims made against the responsible adult/s
- review of other claims involving allegations about specific providers, programmes or institutions,
- review institutional files about residences or providers
- review information held in the alleged perpetrator's staff or caregiver files
- any other relevant information

Potential New Zealand Bill of Rights Act 1990 (BORA) breaches

Any allegations from 1990 onwards may also be potential BORA breaches. Assessors should be aware of allegations that include the claimant:

- being subjected to torture or cruel treatment
- being deprived of liberty
- not being treated with humanity and respect for the inherent dignity of the person
- being subject to unreasonable search or seizure
- being arbitrarily detained
- being subject to false imprisonment.

If the staff member is unsure if the allegation is a potential BORA breach, the first step is to discuss this with their Manager, who if there is any question will then request advice from MSD Legal on whether an allegation should be assessed as a potential BORA breach using the Step 2 assessment.

5.5 Allegation against a current MSD staff member

Allegations against current MSD staff require a more detailed assessment. In addition to any obligations to the claimant, if an allegation is made about a current MSD staff member, MSD has an obligation to their employee to advise them of the complaint and to manage this in a fair and transparent way. In circumstances where an allegation is made against a current MSD staff member, this will be raised with the Manager Claimant Support and Assessment to discuss and agree an approach to assessing these aspects of the claim.

Note: If during the assessment, the assessor finds new information that indicates the allegations in the claim may relate to a current Oranga Tamariki or NGO staff member the

assessor should check whether a safety check has been completed for these allegations and refer these allegations for checking if this has not been completed (see section 4).

5.6 Engaging with operating Non-Government Organisations (NGO) to gather information to support the assessment of a claim

Where an allegation is made in relation to either a current or past staff member/caregiver of an operating NGO, information may be shared or gathered to support the assessment of the claim. It is important to note that there are Court Orders in place that prohibit some disclosures of information in claims that are filed with the Court. Breach of these orders could constitute contempt of Court.

Before sharing any details of a claim filed in Court with an NGO, contact must be made with MSD Legal. MSD Legal are also available to provide assistance as needed when making decisions in other cases as required.

Where an allegation is made in relation to either a current or past staff member/caregiver of an operating NGO the MSD staff member will:

- prepare a summary outlining the NGO's known involvement with the claimant and the relevant allegations relating to that NGO and identify the specific information that is needed by MSD to support the assessment of the claim
- discuss with the Lead Claims Advisor and take advice from MSD Legal as necessary on the best and most streamlined approach for staff to consult with the NGOs
- as part of the Claim Assessment, refer a copy of the draft outcomes for the relevant allegation/s to the NGO for their review and feedback prior to the peer review and quality assurance process being completed.

5.7 Loss of claimant records

A claimant's records should confirm their placement in the home, residence or provider at the time the allegation occurred in order for their allegation to be taken into account for the purpose of settlement.

MSD's and its predecessor organisations had an obligation to maintain and retain records for children and young people who were placed in their care, custody or guardianship. In some instances and for various reasons some of those records have either been lost or destroyed, making it impossible to verify facts such as legal status and placement details. The absence of those records places claimants at a disadvantage for which they should not be penalised. Where records are absent, further investigation will be required to enable an assessment to be made about whether the allegation can be taken into account for the purpose of settlement.

For claimants where there is no trace of a record ever having existed, additional steps should be taken in attempt to confirm the key facts of the claim, such as reviewing any potentially relevant residential registers, logbooks and diaries, and caregiver records to identify if the claimant was placed as stated.

Where no information can be identified to verify the claimant was in State care, an assessor will need to determine whether this lack of information means the allegations are not taken into account for the purpose of settlement. Advice should be sought from Senior Claims Assessors, Lead Claims Advisor, MSD Legal and/or the Manager Claimant Support and Assessment.

5.8 Referencing guidance

Information relied on for the purpose of completing a Claim Assessment must be referenced.

Where information has been relied on for the purpose of determining whether an allegation should be taken into account for the purpose of settlement referencing allows for the information to be easily located where necessary. A reference should include the name of the document and/or the file reference and specific page/folio that the information is on where available.

Specific reference examples include:

- 50000XXXXX, page 1
- 50000XXXXX, folio 2
- R 12 XXX XXX, page 3
- R 12 XXX XXX, folio 4
- Child Welfare Manual 1984, Section A.1.23
- 'Name of claimant' CYRAS, page 1
- Delium DCN.001.0014
- EDRMS 'Title of file/document', page 1

6. Development of settlement recommendations

6.1 Confirming allegations to be taken into account for the purposes of making a settlement recommendation

Once the available information has been gathered it will enable and require an objective decision to be made as to whether the allegation can be taken into account for the purpose of settlement. Advice and guidance should be sought as appropriate from Senior Claims Assessors, the Manager, Lead Claims Advisor and/or MSD Legal to assist decision-making. The rationale for any recommendation should be clearly documented in the Claim Assessment template.

Where an allegation is taken into account for the purpose of settlement the allegation is categorised using the guidance below and the level of seriousness is determined, based on the Definition sheet (see Appendix 3). This includes assessing the severity of the alleged abuse or seriousness of the alleged practice failures and recording the age and any other specific vulnerabilities of the claimant at the time of the alleged abuse or practice failure occurred.

Categories of allegations taken into account for the purpose of settlement:

- **abuse or neglect by responsible adults** (individuals employed, contracted or otherwise engaged by the State who have care and protection responsibilities for the child).
- **inaction, insufficient action or inappropriate action** of the State (and responsible adults) that contributed to abuse or neglect of the child.
- **inadequate practice** that affected the standard of care the child or young person experienced but did not contribute to abuse.

These are then recorded in the Experience Summary section (Part D) of the Claim Assessment template. The Claims Assessor uses this Experience Summary, and guided by the payment categories (see Appendix 2), identifies both a recommended payment category and range (low, mid or high). The rationale for this settlement recommendation is recorded in the Claims Assessment template (Part E). Where a potential BORA breach has been assessed as taken into account for the purpose of settlement, MSD Legal will provide specific settlement advice for these allegations. Where a BORA payment is recommended, the recommended payment in the Claim Assessment (Part D) will be recorded as "\$x,000 plus \$x,000 (BORA)".

The Claims Assessor then writes a summary paragraph, using the claimant's words as much as possible, which concisely describes the claimant's reported overall experience in care. This allows MSD to develop understanding about claimants' reported experiences in care, which will support information sharing with services responsible for children in care today. Any information sharing would not identify individual claimants, but rather aggregated themes. Claimant's reported experiences may also be able to be used in the feedback process and Chief Executive apology letter.

6.2 Considerations for determining if an allegation is not to be taken into account for the purposes of recommending a settlement offer

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 outlined in section 5.4 'Step 2' and should therefore be considered using against the guidance outlined in 6.3
- 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 be appropriate for the claim to be reviewed
- information has been identified in the assessment that points against the allegation.

Examples of the type of information that may point against the allegation include:

- where an allegation of physical abuse has been made but there is clear medical information which does not support physical abuse
- documented investigation of an allegation which has been raised in the claim, where that investigation is deemed to meet the reasonable standards of the time and which concludes that the alleged incident did not happen
- records that indicate regular social worker visits and face to face contact with the claimant where the opposite is alleged
- information that there were policy/legislative grounds for placement in secure care where an allegation of inappropriate secure care is made (although if the policy of the institution was to admit a young person to a residence through secure it may be worth seeking further guidance)
- records that indicate attendance at school and/or reasonable efforts to enrol the claimant in education where it is alleged that they did not attend school. Note that allegations about the standard/quality of a claimant's education are not for MSD to respond to
- records that indicate medical/dental treatment where it is alleged no such treatment was provided
- clear information that a named staff member or caregiver about whom an allegation is made was not present at the relevant time.

Where there is some ambiguity about the effect some information may have on the claim, advice and guidance should be sought as appropriate from Senior Claims Assessors, the Manager, Lead Claims Advisor and/or MSD Legal to assist decision-making.

It is not necessary to identify information which supports an allegation in order for that allegation to be taken into account for the purposes of recommending settlement. However, where such information is identified this should be recorded and referenced. This provides valuable information that supports MSD to provide insight into past practices that can be used to assist with future improvements to the care system. It also assists with providing feedback to the claimant.

Given the difficulties of memory and the length of time that some claimants wait before bringing a claim if the claimant has misidentified the person they make allegations against, this does not automatically point against acceptance for the purpose of settlement.

6.3 Considerations for determining whether an allegation is taken into account for the purpose of making a settlement offer

Step 2 analyses require 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. The following considerations may assist when undertaking a Step 2 analysis of an allegation of abuse:

- plausibility of the claimant's account (e.g. it may not be reasonable to believe that a claimant was seriously sexually abused on multiple occasions if the placement was one day in duration)
- whether documents confirm contact between the person the claimant alleged abused them
- whether the claimant's allegations are consistent with information MSD holds about a particular 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
- the certainty of other similar allegations for example criminal convictions or complaints made and investigated at the time.

7. Peer review, Quality Assurance and Sign out process

7.1 Peer Review and Quality Assurance of Claim Assessment

Once completed, the Claim Assessment template is peer reviewed by another Claims Assessor who will make the following checks:

- that all allegations raised by the claimant have been addressed based on the list of allegations
- that decisions about which allegations are taken into account for the purpose of settlement are appropriate
- that Step 2 analyses are logical and clear
- that the summary statement accurately reflects the allegations that are taken into account for the purpose of settlement
- that the recommended payment and rationale aligns with the claim summary and the payment categories
- review the claimant's experience statement for any edits required.

Once a group of settlement recommendations have been completed they will be referred to the Consistency Panel for endorsement. This will include recommendations for no

payment. The purpose of the Consistency Panel is to ensure that where financial payments are offered, there is consistency of payments across that set of claims and the previous process. All endorsed settlement recommendations will be batched together and relevant information will be sent to the Historic Claims Admin email inbox to create the settlement schedule for sign-out.

7.2 Settlement schedule and approval

The Claims Administration team will collate all recommended settlements, including recommendations for no payment, into a schedule ready for approval. The completed schedule, along with a DCE memo, will be endorsed by the General Manager Historic Claims, sent to the Chief Legal Advisor, MSD for certification before being sent to the Deputy Chief Executive, Corporate Solutions who has the delegation to approve settlement payments.

Once the schedule is approved the:

- Manager will be advised so that the feedback and offer process can be initiated
- Claims Administration team records any relevant information on the individual claimant's file and the Historic Claims workbook. This is to include confirmation of the approved settlement for the claimant.

8. Feedback with Claimants

8.1 Offer acceptance and administrative process

For direct claimants:

The Claims Assessor will contact the claimant to arrange feedback and provide a short settlement letter. The outcome of the feedback discussion is recorded in the Claimant's file and emailed to the Historic Claims Admin email inbox to update the Historic Claims workbook.

Where the claimant accepts the outcome of the Claim Assessment and proposed redress, the staff member providing feedback to the claimant will:

- provide a settlement deed for the claimant to seek legal advice if they wish, and (if they wish to proceed) sign and return to MSD
- obtain verified bank details for the account where the claimant would like any financial payment to be made
- obtain written consent of the claimant and the bank account holder if the bank account is not in the name of the claimant (see "Alternate Account Consent form")
- where relevant, confirm the address or email address the claimant would like their written apology sent to
- once the signed settlement deed has been received, the Claims Administration team will, where required, arrange financial payment to the agreed verified

bank account. In conjunction, the team will (where relevant) arrange the sign-out of an apology letter by the Chief Executive and send to the claimant.

For represented claimants:

- MSD Legal will send the settlement letter (offer)
- if the claimant accepts the offer, their lawyer will confirm acceptance.
- where required, verified bank account details will be obtained
- a settlement deed will then be drafted and provided to the claimant's lawyer for approval and signing
- once acceptance has been confirmed by MSD Legal, the Claims Administration team will, where required, arrange financial payment to the agreed verified bank account. In conjunction, the team will (where relevant) arrange the sign-out of an apology letter by the Chief Executive and send an original copy along with the signed settlement deed to their lawyer.

8.2 Guidance for providing feedback to claimants

Feedback is an important part of the claims process. Providing feedback to claimants allows for MSD to acknowledge a claimant's account of their experience in care and provide factual information about their involvement with MSD (or its predecessors), support their understanding about their care journey and where relevant, provide a settlement offer.

It is important for claimants to have a clear understanding of the claims process from the point of first contact and that needs to be reinforced throughout their contact with MSD, including:

- It is an alternative dispute resolution (ADR) process
- It has limitations to the way claims are assessed. It does not seek to establish the facts of a claim in the same way a court does
- We do not usually interview anyone other than the claimant
- We do not accept allegations but will take certain allegations into account for the purposes of making a settlement offer.

It is helpful to begin the feedback conversation by reinforcing the purpose and limitations of the process. Caution and careful consideration is to be applied to language which infers taking responsibility for an allegation of abuse, given that this is an alternative dispute resolution process and does not test evidence to the degree that a court would. Further guidance to support these discussions is under development.

It is MSD's intention to offer face to face feedback to both direct, represented and filed claimants, depending on the claimant's wishes.

9. Rejection of Claim Assessment outcome and offer of redress

9.1 Review options

Claimants can request a review if they are dissatisfied with the outcome of their claim. Where the offer is rejected by the claimant, the Manager will decide the next steps based on the claimant's reasons for rejecting the offer and their individual circumstances. A review **may** include a:

- settlement review by the Consistency Panel, to confirm that the claim outcome and payment category and range is consistent with similar claims
- detailed assessment of either a specific aspect of the claim or the claim in its entirety.

All reviewed claims will require peer review and Consistency Panel endorsement, and where changes are made to their settlement payment, DCE approval will be sought.

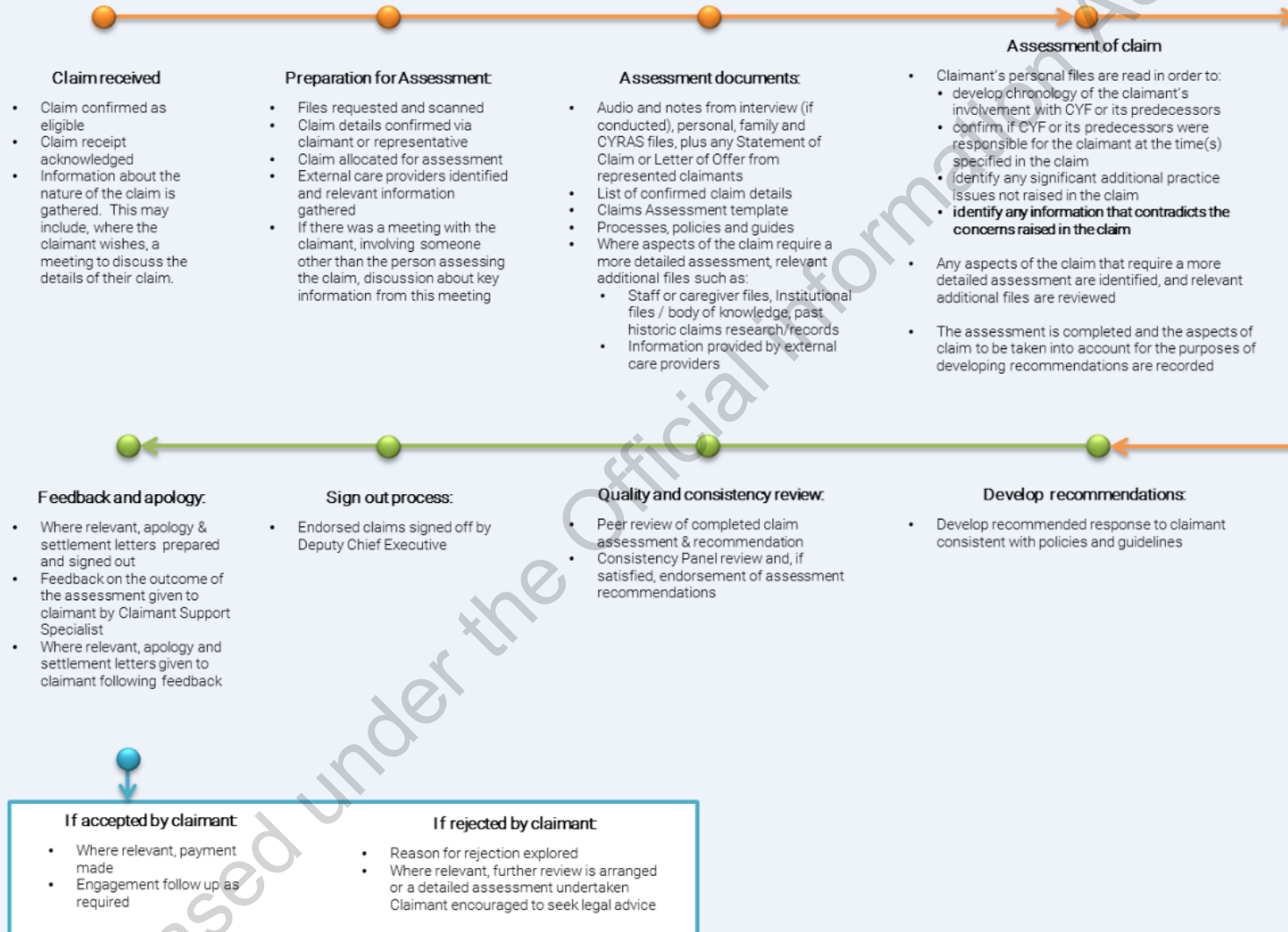
The claimant will be kept informed about what is happening with their claim and where appropriate will be given choices about this. The claimant will be informed of the outcome of the review, and should they remain dissatisfied will be advised to seek legal advice.

9.2 Detailed assessment

The scope of a detailed assessment will be determined on a case by case basis, depending on the reason for a review being requested by a claimant, and will be completed by a Senior Claims Assessor. See the payment categories for more guidance on this.

The completed detailed assessment and recommended payment amount are provided to the consistency panel for review and endorsement once peer review has been completed.

Process for Claim Assessment



APPENDIX 2

Payment Categories

Determining a payment recommendation:

An overarching principle is that we are providing an offer of settlement taking into account particular allegations of abuse, inaction and compromised standard of care. We are not compensating for the long term impact of alleged abuse inaction or compromised care. Therefore payments are structured around the incidents and lack of service that it has been determined will be taken into account for the purposes of an offer.

To enable recommendations to remain consistent and fair to past claimants, recommended payments for Claim Assessments are determined by the categories outlined below. In order to fall within a payment category, all aspects of the description do not need to be met. The cumulative nature of allegations can be accommodated within a category. Allegations of practice failures are assessed against the policy and practice requirements at the time and in that era.

Further guidance is provided within the payment categories to support decision making. When making this payment recommendation, the Definitions sheet should also be referred to.

Detailed Claims Assessment:

Following completion of a detailed assessment the Claims Assessor uses the summary of the claimant's experience and guided by the payment categories identifies the payment category into which the claim could fall and where in this band it may fall (low, mid or high). As appropriate the Claims Assessor should liaise with MSD Legal to consider what other factors (such as BORA or litigation risk) that should be taken into account when determining the recommended payment amount. The rationale for the proposed payment is then documented as part of the assessment memo.

<p>PAYMENT CATEGORIES (Confidential)</p> <p>This is guidance only, and each case will turn on its own facts and circumstances. As such there will be exceptions and these will be considered by the Consistency Panel. Where there are allegations that could fall under the Bill of Rights Act or litigation risk, payment recommendations can be considered separately.⁴ While these categories, and the terms used, simplify the complexities of the alleged abuse, its intention is not to minimise a survivor’s lived experience or infer a lesser impact of their lived experience. Each claim will be handled sensitively and with respect.</p>	<p>SUGGESTED PAYMENTS</p>
<p>These are the claims that have clear aggravating factors and the mix of abuse detailed in Category 6; with circumstances and conditions that are exceptional. It could involve a level of violence, death, exposure, injury that sets it apart from other claimant experiences.</p> <p><i>Guidance:</i> A small proportion of claims have been settled at this level. These claims are likely managed through a detailed assessment, and in consultation with the Manager.</p>	<p>Category 7 Above \$55K (1.5% of all claims)</p>
<p>Chronic and serious sexual abuse and physical abuse by <u>responsible adult AND/OR high levels of inaction</u> contributing to extreme abuse AND a context of chronic <u>wide-ranging practice failures</u> that contribute to a prolonged and severely harmful care experience.</p> <p><i>Guidance:</i> For a claim to reach this threshold there is an assumption of increasing severity and may also involve serious abuse when the child was profoundly vulnerable. If a Category 6 payment is recommended it may benefit from a detailed assessment. Your manager will provide further guidance.</p>	<p>Category 6 \$50K (\$46K - \$55K) (3% of all claims)</p>
<p>A mix of cumulative serious physical and/or serious sexual abuse, frequent and chronic, by <u>responsible adult AND/OR high levels of inaction</u> contributing to serious chronic physical or sexual abuse. Serious abuse at a time when the child is highly vulnerable AND a continued impact of <u>wide-ranging practice failures</u>.</p> <p><i>Guidance:</i> For the most part this category will involve increasing chronic and serious physical and / or sexual abuse by a responsible adult or from high levels of serious and chronic inaction that has been evidenced by a STEP 2 to be in scope. It may also involve serious abuse when the child was highly vulnerable.</p>	<p>Category 5 \$40K (\$36K - \$45K) (6% of all claims)</p>
<p>A mix of moderate (chronic) and serious (all form) abuse incidents by <u>responsible adult AND/OR the presence of high levels of inaction</u> contributing to more frequent serious abuse or chronic moderate abuse AND a backdrop of <u>wide-ranging practice failures</u>.</p> <p><i>Guidance:</i> Where an allegation is relied on to recommend this level of payment a STEP 2 analysis is required; against a responsible adult involving sexual abuse (moderate or serious) or physical abuse (chronic moderate or serious) or inaction that contributed to serious abuse. The definition matrix guides the meaning of high levels of inaction. If inadequate practice is wide-ranging this may be considered an aggravating factor and justify a recommendation for a higher payment in the band.</p>	<p>Category 4 \$30K (\$26K - \$35K) (12% of all claims)</p>
<p>A mix of low and moderate (all form) abuse by <u>responsible adult</u> – the experience of more frequent abuse. May include acute or infrequent incidents of more serious abuse AND/OR <u>medium levels of inaction</u> contributing to abuse (all forms) including abuse by third party (family, friends, other young people) AND <u>multiple or wide-ranging practice failures</u> for a prolonged period, a context of practice that has allowed the above more serious abuse to occur.</p> <p><i>Guidance:</i> The definition matrix guides the meaning of medium inaction. The use of AND/OR identifies the primary factors that are present in a band. From Category three and higher, abuse by responsible adult and inaction are the drivers for recommending that payment. One or both may be present but not necessarily so. Inadequate practice may also be present as the care context but on its own would not likely reach a Category 3 or higher payment. It may be seen as an aggravating factor for a higher payment in the band.</p>	<p>Category 3 \$20K (\$16K - \$25K) (31% of all claims)</p>
<p>The presence of low level (all form) abuse by <u>responsible adult</u> that may increase in frequency. May include acute or infrequent incidents of more moderate abuse AND/OR <u>low levels of inaction</u>, investigating concerns, assessing home or care circumstances, or carrying out the statutory role, allowing low or moderate (all form) abuse to occur or continue AND/OR <u>multiple practice failures</u> that may impact on the standard of care,</p>	<p>Category 2 \$10K \$6K - \$15K (31% of all claims)</p>

<p>contribute to placement and schooling instability, lack of access to health and education and access to family and culture. Harsh / excessive physical discipline.</p> <p><i>Guidance:</i> This category is where we acknowledge a mix of low level (all form) abuse either by responsible adults or from inaction. Low levels of inaction are detailed on the definition matrix. To remain consistent, claims that have inadequate practice as the highest level allegations, for the most part, will be accommodated in Category 1 or 2. Not all aspects (abuse or inadequate practice) need to be present but where they are, a higher payment may be recommended. Flexibility in recommended payment within the band stands on the nature of the claim.</p>	
<p>Predominantly <u>inadequate practice</u>. Concerns not investigated or failure to visit, monitor, supervise, plan or assess – where <u>minor practice failures</u> did not contribute to abuse. A lack of training and skills, poor decision making, lack of proper process, and casenote recording. Failure to enable contact with siblings/whānau.</p> <p><i>Guidance:</i> Claims within this range will likely be at the minor end of inadequate practice, one-off concerns, and / or for a short period of time.</p>	<p>Category 1 \$3K \$1K - \$5K (15% of all claims)</p>

⁴ The payment categories provide guidance for analysis of those allegations that will be taken into account for the purposes of recommending settlement with reference to the type and severity of allegations. For clarity where this page refers to a form of abuse, inaction or practice failure, the reference is to an allegation of such conduct that it has been determined will be taken into account for the purposes of a settlement offer.

APPENDIX 3

Definition sheet

The purpose of this Definition sheet is to guide the assessment of severity and frequency of the incidents of alleged abuse, and the extent of alleged practice failures. Simply stated these definitions allow an understanding of the type of abuse alleged and the extent of that alleged abuse. While loosely based on the Crimes Act, these definitions are not restricted by the threshold of criminal liability.

Definition of terms used⁵

Acute/Infrequent abuse: Refers to one-off incidents, or other infrequent, low instances and more variable abuse, to the level described (low, moderate or serious). This is days or weeks / months, not years. Where abuse is unspecified it could default as low.

Frequent / repeated abuse: Refers to abuse that has a pattern of regularity to it, recurrent but not to the level of chronic or prolonged. This can be a high number of months, to several years.

Chronic / prolonged abuse: Refers to persisting, repetitive or recurring, long-lasting abuse, to the level described (low, moderate or serious). This is a number of years.

⁵ For clarity where this page defines a form of abuse, inaction or practice failure, the definition relates to an allegation of such conduct that is being taken into account for the purposes of recommending a settlement offer.

Alleged abuse by <u>responsible adults</u>		
Defined as agents of the Ministry who have the care, protection and justice responsibility for the child		
Abuse is all forms (sexual, physical, emotional (verbal/psychological) abuse and / or neglect)		
TYPE	SEVERITY Internal description only	MEANING; A child or young person may experience:
Sexual abuse Child used for sexual purposes or involved in a sexual act Acts involving circumstances of indecency with, or sexual violation of a child, or using a child in the making of sexual imaging Note vulnerability of the child	Low	Definition: For the purposes of this definition it is where there is exposure, witnessing sexual acts, grooming or sexualised behaviour. Examples may include: <ul style="list-style-type: none"> Being exposed to indecent material (whether, written, spoken, visual), sitting on lap for the sexual gratification of perpetrator, being watched when undressing or showering, made to watch or view genitals, inappropriate sexual talk. Encouraging a child to look at pornography or behave in a sexually inappropriate way. Grooming a child in preparation for sexual abuse (this may be done via the internet).
	Moderate	Definition: For the purposes of this definition it is where there is sexualised contact that does not meet the definition of unlawful sexual connection. Examples may include: <ul style="list-style-type: none"> Sexualised contact but not unlawful sexual connection. This can be under or over clothing. This includes sexual activity which may be consented but under age. Non-penetrative acts such as kissing, fondling, rubbing, genital touching or masturbation. Forcing or enticing a child to take part in sexual activities whether or not a child is aware of what is happening. Abuse of power leading to a young person 16 years and over agreeing to have a sexual relationship.
	Serious	Definition: For the purposes of this definition it is consistent with unlawful sexual connection as determined under the Crimes Act 1961. Examples may include: <ul style="list-style-type: none"> Sexual connection; Rape, penetration and oral sex. This can include a part of the body of another person or an object.
Physical abuse Actions that result in, or could potentially result in, physical harm or injury being inflicted on a child Non accidental injury of a child Note vulnerability of the child Note: This includes physical abuse by another young person where that abuse is directed by a responsible adult.	Low	Definition: For the purposes of this definition, it is punishment beyond standards allowed and relevant policy, or abuse that results in no more than bruising injury. Examples may include: Harsh punishment, discipline or harsh treatment, smacked or hit with open hand or object. It may involve tripping up, kicking, slapping and shoving. A responsible adult instructing a young person to abuse another young person. Depending on the circumstances, this may be considered more serious.
	Moderate	Definition: For the purposes of this definition, it is more serious abuse, possible visible injury and an increased level of violence. Examples may include: Striking, closed fist punching, whipping, stomping/kicking. Can include blows and kicks to head and/or body. May cause multiple bruises, blisters, cuts and welts. Use of an object as a weapon (i.e. broom, belt, bat)
	Serious	Definition: By legal definition assault, but also prolonged, ordinarily requires (or should require) more intensive medical attention or hospitalisation. Enhanced maliciousness or cruelty in the abuse. Examples may include: Physical assault resulting in dislocated joints, serious burns, internal injuries, brain damage, broken bones, lifelong injury. Concussion or loss of consciousness. Bruising and abrasions where the child is extremely young (infant, not yet mobile).
Emotional / Verbal / Psychological abuse Effecting a child's mental or social development, often a pattern of behaviour that causes injury over time	Definition: Witnessing serious abuse / violence, using words to be abusive (as described) Examples may include: Telling a child he or she is unwanted or unloved, treating them differently from other children in the home, showing little interest. Calling a child names, criticising, belittling, demeaning, mocking, and racist slurs. Accusing, blaming, insulting, threatening abandonment, manipulating, taking advantage, screaming, yelling, confining, engaging child in criminal acts, making them tell lies, encouraging. Exposing a child to violence, especially domestic and / or sexual violence. Note: We are not differentiating between low, moderate, serious, but noting its presence Note: We are not making a statement here about the long term psychological / traumatic impact of all forms of abuse.	
Neglect A child is not given the care, supervision, affection and support needed for their health, safety and wellbeing	Low (infrequent)	This section refers to physical, supervisory and medical neglect. The severity of the neglect is determined by duration and nature of neglect. Examples may include: An environment with periods where there is no food, running water, power, functioning toilet, where it is unhygienic. Overcrowding. Failing to provide enough food, or clothing. Repeatedly leaving a child in an inappropriate person's care (for days or weeks at a time). Failing to provide the care required for a child or young person to maintain adequate personal hygiene. Allowing a child to miss school unjustifiably. Condoning the use of drugs, alcohol, or involvement in crime. Not supervising a child or young person appropriately. Not ensuring access to necessary medical or dental care. Endangering by not taking child to hospital or seeking appropriate medical help for serious illness or injury.
	Moderate (repeated / frequent)	
	Serious (chronic)	

Alleged abuse due to inaction, insufficient action and/or inappropriate action by the Ministry referenced as lack of action.					
Abuse is all forms (sexual, physical, emotional (verbal, psychological) abuse and/or neglect)					
Note: Many of the practice failures here are also seen in inadequate practice – but are differentiated due to whether practice <u>contributed to abuse</u> (in many circumstances this may be abuse from a non-responsible adult).					
Duration of abuse					
Severity of abuse	Low	Infrequent	Repeated/ frequent	Chronic	<p><i>Inaction, insufficient action and/or inappropriate action is a lack of action where it is expected and appropriate. The statutory role and responsibility is not enacted, non-intervention where intervention is recommended, dereliction of responsibility.</i></p> <p><i>The severity of the inaction is determined by considering the <u>presence</u> of the inaction, the <u>duration</u> of the abuse and the <u>severity</u> of the abuse.</i></p> <p>Common practice failures recognised as a lack of action contributing to abuse:</p> <ul style="list-style-type: none"> • Failure of the Ministry to investigate or adequately investigate concerns either at home or in a foster or residential placement. E.g: Reported concerns received with inadequate investigation/assessment, reported concerns not investigated/assessed due to case transferring between sites. • Failure of the foster parent or staff member to act on concerns of abuse. E.g: Foster parent fails to pass on concerns for a child or young person, staff member fails to act to ensure the child or young person is safe in their placement. • Failure to take complaint or Court action where there are grounds to do so. This can often be a consequence of inadequate or lack of investigation/assessment. E.g: multiple reports of concern received and threshold met for Court action but not taken, inappropriate intervention taken when considering the nature of the case, failure to recognise cumulative abuse over time which warrants action. • Lack of supervision by foster parent or staff member contributing to abuse of a child or young person. E.g: a supervision level which is inadequate when considering the age of the child, inadequate safety planning when children with known at-risk behaviour (i.e. harmful sexual behaviour) are placed with other children, abuse by other children/young people in institutions and kingpin culture where this is known and no protective action is taken. <p><i>The above are <u>examples</u> of commonly recognised inaction, insufficient or inappropriate action, rather than a complete list.</i></p>
		Inaction (low levels)	Inaction (low levels)	Inaction (medium levels)	
	Moderate	Inaction (low levels)	Inaction (medium levels)	Inaction (high levels)	
		Inaction (medium levels)	Inaction (high levels)	Inaction (high levels)	
	Serious	Inaction (medium levels)	Inaction (high levels)	Inaction (high levels)	
		Inaction (high levels)	Inaction (high levels)	Inaction (high levels)	

Note: When high levels of inaction is found, consider whether a step 2 analysis is required.

Alleged Inadequate practice: failures which do not contribute to abuse of a child or young person.		
Note: Practice failures are where the standard of care a child/young person receives does not meet the standards of the time. The standards of the time can be determined by reference to the legislation, policy and practice guidelines of the time.		
Note: The severity of the practice failure/s is based on the frequency and nature of the failures. The number of failures and duration of failures can be considered.		
<u>Minor</u> practice failures	<u>Minor failures:</u> Policy and practice requirements of that time period not met – these may be minor in nature or infrequent. Records not maintained/lost/destroyed may be captured within this category.	<u>Inadequate practice may include:</u> -failure to assess a caregiver as per policy at that time -failure to meaningfully plan or engage with the CYP which results in identifiable consequences – this could include the failure to monitor, failure to visit and see CYP on their own or severe lack of long term planning. This may also include failure to implement whanau contact plans. -inappropriate use of secure care -a claimant being overworked or being subjected to inappropriate exercise.
<u>Multiple</u> practice failures	<u>Multiple failures:</u> A combination of basic tasks, role and responsibilities not attended to, that impact on the standard of care experienced by the child. These responsibilities have been outlined in legislation, policy and practice guidance, with the expectation that staff will know and have been trained in the practice requirements. Having high number of vacancies, casual or untrained staff, or high workloads may explain the failure but does not excuse it. This could be one practice failure repeated over a period of time, or multiple different failures.	
<u>Wide-ranging</u> practice failures	<u>Wide-ranging failures:</u> Across a number of staff members, times and places.	

Aggravating factors relevant for influencing payment category ratings
Vulnerability: Vulnerability can be synonymous with childhood, and heightened vulnerability can occur when children and young people are in the care system. For the purpose of determining a heightened vulnerability which may influence payment category ratings, it refers to <i>profound vulnerability</i> (pre-verbal children, extreme physical or intellectual disability). The intent is to recognise when a child or young person is unable to verbalise abuse or neglect, or physically remove themselves from risk due to restricted mobility or cognition.
Prompts to refer for legal consideration
Potential causes of action under the Bill of Rights Act (BORA) 1990: Allegations which occurred after 1 January 1990 that are unusual, inhumane, contain a degree of cruelty, humiliation or insult the dignity of a claimant could potentially meet the definition of a BORA allegation and should be escalated through your manager to MSD Legal for review. While a BORA breach is difficult to define some examples of allegations which have been previously MSD Legal are when claimants have alleged that they have been; unlawfully strip searched, tied to a tree, made to fear for their lives or detained in a way which caused extreme distress to the claimant. False imprisonment: Claimants often allege 'false imprisonment' when they are held in residences or secure care. In most of these situations the Department or its predecessors had the legal authority to hold a young person and choose to place them either in secure or a residence. However in situations where a young person was held without lawful authority this should be raised with MSD Legal as it could constitute false imprisonment.