



# Claimant Engagement on Historic Claims Resolution Process

Final report

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**ALLEN+CLARKE**

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## 1. BACKGROUND AND CONTEXT

In 2006, the Ministry of Social Development (MSD) established a Claims Resolution Team to respond to claims against the Crown that relate to allegations of historic abuse or neglect on behalf of Child, Youth and Family or its predecessor agencies. Over time, the number of claims received by MSD has increased significantly, with the team currently closing far fewer claims than it receives on an annual basis. As a result, a substantial backlog has built up with claimants having to wait over three years before their claim is assessed. It is broadly agreed that this is neither an acceptable nor sustainable situation for claimants or MSD.

In 2015, a Two-Path Approach temporarily offered claimants an alternative process that considered less evidence in order to speed up the assessment and closure of claims. Over 600 claimants were able to resolve their claims through the Two-Path Approach. On the basis of this experience, MSD is in the process of designing a new streamlined assessment process that builds on the experience of the Two-Path Approach and provides an experience that is more responsive to claimants.

## 2. OBJECTIVES AND METHODOLOGY

Within the context set out above, *Allen + Clarke* was requested by MSD to engage with claimants to understand their experience of the Claims Resolution Process. In addition to open discussion on their experiences, claimants were requested to provide feedback on the proposed process that MSD has designed. The objective of the engagement was to:

- Hear from claimants about which elements of the process MSD has currently got right or could benefit from improvement;
- Understand the parts of the process that are of greater value to the claimant and any parts that are considered unnecessary and why;
- Identify any factors that are currently missing that could improve the process for a claimant.

Ultimately, the engagement with claimants seeks to ensure that any new process that is put in place provides claimants with the support they need as they go through the resolution process.

Two workshops were held in Auckland with participants from the Auckland, Waikato, Hawke's Bay regions, and one workshop was held in Christchurch with participants from the Canterbury, and Otago regions. Claimants included a mix of women and men at different stages of the Claims Resolution Process as well as a number of support people. In total, *Allen + Clarke* met with 13 claimants (eight men and five women) and two support people.

## 3. FEEDBACK FROM CLAIMANTS

This section of the report contains a summary of the thoughts and feedback that claimants shared with us. The information has been grouped into themes that sit within three sub-sections – initial claim and intake, reviewing claim, and claim resolution.

## 3.1. Initial claim and intake

### 3.1.1. Making a claim

Most claimants had found out about the historic claims process through word of mouth, often from friends or family members who had made their own claim, or through other support services they had accessed relating to their experiences, including the confidential listening service. Others had looked it up themselves after hearing news stories, including recently about the Royal Commission. All claimants found the initial claim process to be emotionally demanding, with many claimants stating that it took them some time to build the strength to face the memories and emotions that they had tried to avoid or manage for a number of years.

Aside from the emotional burden associated with making a claim, claimants found the initial process of lodging the claim relatively straightforward, although they often came away from the initial contact without a clear picture of what the process would look like and what would be expected of them. Many claimants had used the 0800 number to make initial contact and most had positive experiences with this. However, there was some concern and discomfort over the level of detail that people are expected to provide during this initial call about extremely personal and sensitive information. There was some benefit seen to initially screening claimants to inform the claim process, with anecdotal evidence of fast-tracking because of a health condition.

### 3.1.2. Receiving personal file information

Claimants generally found the process for accessing their personal file information relatively quick and easy. Many felt that the information was valuable for confirming their memories of what happened and highlighting areas they were previously in the dark about (e.g., medical history). That said, claimants commonly expressed concern regarding the amount of information that is redacted (often entire pages of notes) or missing from their files (e.g., police reports they remember making at the time). This has led to a level of suspicion regarding whether information relating to their abuse is being censored or “covered up”.

It was also noted by many claimants that information about their abuse is often absent in their personal files, given that the files commonly focus on the more practical aspects of their care arrangements (e.g., where they were living). This was especially the case where the abuse was not reported or noticed while they were in care, or where children were moved in and out of state care. Because of this, many claimants felt that the personal files reflected the state’s view of what happened, rather than being an accurate reflection of their personal story and experiences.

All claimants spoke of the emotional toll that is exacted when reading through the personal files, with some claimants taking years to read through the whole file. A number of claimants managed the associated distress by having a counsellor or other mental health professional read through the files with them over a number of sessions.

#### ***Areas of improvement identified by claimants***

- Provide access to a counsellor or other mental health professional to help support people through the process of reading through the personal file information.
- Go through the file with claimants during the intake interview, so that concerns and questions could be addressed immediately.

### 3.1.3. Intake interview

All claimants who had undergone their intake interview found the experience to be emotionally challenging, but overall felt that it was a useful part of the process. The process of arranging the interview was not always positive. With claimants often waiting up to a year between the initial contact and participating in the intake interview, some found this period (often without updates from the MSD team) to be particularly stressful. When contact was made to arrange the intake interview, some felt that there was not enough notice given to be able to make themselves available, which led to further extended periods of waiting until the MSD staff members were back in their region again.

Claimants valued the opportunity to share their story. However, most claimants stated that they experienced high levels of distress following the interview, with intrusive memories common. Many also later recalled details that they had forgotten or not felt comfortable sharing during the interview and were reluctant to follow up with MSD staff for fear of being a “hassle” or the emotional impact of repeatedly discussing their experiences. Additionally, some felt that the session was too short to comprehensively and safely share their story. It was suggested that the claims resolution process could be undertaken in a single session to minimise the number of times a claimant has to tell their story. This would require MSD to complete an initial assessment prior to a meeting with the claimant where the details of the file would be discussed, and an offer of settlement made in a single day.

#### ***Areas of improvement identified by claimants***

- Provide sufficient notice (one month suggested) when arranging the interview, to allow time for the claimant to organise work and childcare arrangements.
- Consider increasing length of time for the intake interview to three hours.
- Investigate options for a different resolution process that is concluded on a single day with only one meeting with the claimant.

### 3.1.4. Staff involved in the process

Claimants unanimously felt the most important characteristics of the direct engagement was the level of compassion and acceptance of the claimant’s story. Making people feel trusted, safe and respected is also important, as is treating people with dignity and offering people access to any support services they might require. Most claimants felt that the staff they had engaged with for their interviews displayed these characteristics, although they felt that these staff did not necessarily have to be social workers to do so. Some claimants felt that social workers could become “jaded” and less compassionate after hearing many similar stories, and that they may not always be appropriately trained to deal with the sensitive topics involved in the claims process. There was a view that staff with similar lived experience (e.g. former claimants) may make claimants feel more comfortable and understood and could help the healing process.

### ***Areas of improvement identified by claimants***

- Consider using staff with a shared lived experience to engage with claimants.
- Ensure all staff that have direct contact with claimants have specialised training in discussing abuse and neglect.

#### **3.1.5. Mental health support**

Claimants find the claims process to be incredibly emotionally taxing. There are some parts of the process that are particularly distressing for claimants, such as the period following initial contact with the claims team, reading through personal files, and immediately after the intake interview. Many claimants spoke about requiring professional mental health support during these periods, in addition to the support they needed to address the impact of their experiences as children. This support was offered to most individuals during the intake interview, however many felt that they would benefit from this support from the moment they made contact with the claims team and others did not recall ever being offered mental health support. For those who were offered access to mental health support, some found it difficult to find a mental health professional that they were able to trust and connect with. Claimants spoke about often needing more than six sessions to build sufficient rapport with professionals, given the nature of the experiences being discussed.

### ***Areas of improvement identified by claimants***

- Provide claimants access to appropriate mental health support as soon as they lodge a claim and maintain support throughout the process, for as long as this is needed.
- Consider also providing support to cover the logistics of accessing mental health services (e.g. transport and child care).

## **3.2. Reviewing claims**

### **3.2.1. Knowledge of the process**

Most of the claimants had relatively limited understanding or visibility of the claims review process, including how claims were assessed, where claimants fit into the process, and how the claim would be resolved. For example, many were unaware that a second interview would be held in which the findings from the review process would be fed back to them and where they would be given the opportunity for closure on the process. Those who had not yet participated in an intake interview were largely unaware that this was part of the process and did not know what was going to happen now that they had made initial contact with the team. This uncertainty regarding the process was causing stress for some claimants.

### **3.2.2. Communication**

Some of the lack of clarity and understanding outlined in the section above could relate to what claimants felt was a relatively low level of communication throughout the process. Many claimants did not receive any communication between making their initial contact with the team and receiving a call to book the intake interview, which could be a period of months. In some cases, claimants stated they had forgotten they had even made a claim. This lack of

communication made the process feel impersonal to claimants, who felt like they were being treated as just another person in the system. Some claimants also stated that waiting for contact was stressful for them.

Some claimants had used the 0800 duty phone service to make contact with the claims team. However, there were issues with the wait time associated with this and the feeling that they needed to retell their story every time they called up, which causes negative thoughts and emotions to resurface. Others noted they had refrained from using the 0800 number as they did not want to be a “hassle” and assumed someone would contact them in due course.

***Areas of improvement identified by claimants***

- Make pro-active contact with claimants from the beginning of the process to check in and update on progress. This could be a phone call, email or letter.
- Develop an online “tracking” system where claimants could log in and see the progress of their claim.

**3.2.3. Approach to reviewing claims**

Claimants were unanimously supportive of the proposed change from verifying claims to accepting claims at face value and only checking for discrepancies. Many felt this is a more appropriate and reliable approach given that information and experiences are often missing in their personal files. They also felt this is a more supportive approach for claimants, as some think that “verification” is too adversarial and dismissive of their story, and that it detracts from the compassion, trust and respect they were shown in their initial contact with the claims team. For this reason, some felt that the current process re-victimises claimants. Additionally, some claimants suggested that a unified approach between Ministries (Social Development, Education, and Health) be established so that a single claim could be submitted regardless of the organisation involved.

Most claimants were also hopeful that this new approach to claims review would shorten the timeframe for resolving claims. They felt the revised approach would cut down on the amount of investigation and communication it currently takes to verify claims. That said, claimants were also supportive of the in-depth assessment being available for those claimants who preferred this. They believed some individuals would prefer more acknowledgement and recognition of their journey and experiences.

***Areas of improvement identified by claimants***

- Reduce timeframes from lodging to resolving claims to less than 12 months.
- Develop a single claims resolution process for all abuse regardless of the entity involved.

**3.2.4. Independence of process**

Some claimants thought the transparency and independence of the claims resolution process is compromised by MSD leading the process. They felt that the process would have more credibility in the eyes of claimants if those assessing claims were independent from MSD, who they saw as

“investigating themselves”. Because of their experiences, claimants thought that some people will be reluctant to engage with the state to address their claims.

An arrangement similar to the Confidential Listening and Assistance Service was also suggested for independent claims resolution. This could include having an independent person signing off on the decisions made by the claims resolution team regarding acceptance and resolution of claims.

#### ***Areas of improvement identified by claimants***

- Set up a claims resolution process that is independent of MSD.

### **3.3. Claim resolution**

#### **3.3.1. What ‘resolution’ looks like for claimants**

Claimants had differing opinions on what ‘resolution’ meant in relation to their claim. While a financial offer of settlement was important to some, many spoke of their interest in informing current social work practice to ensure children in care today are not likely to suffer a similar experience to theirs. Indeed, it was noted by a number of claimants that they were unaware that a financial offer would be made at the end of the process.

Some claimants also mentioned instances where the initial implied acceptance of the claim at the interview was not reflected in the feedback session. Documents provided at the feedback session were seen as not providing the whole picture of the experience of the claimant (this was attributed to the gaps in the individual files mentioned earlier).

All claimants emphasised that the claims process did not in fact resolve anything and felt this should be acknowledged. While the claim relates to the experience of the child in care, the impact of that experience has consequences throughout adult life that a claim process cannot resolve. There was a feeling from some claimants that this should be acknowledged more explicitly as a financial settlement process rather than a ‘resolution’ process.

#### **3.3.2. Financial resolution**

While the importance of a payment itself varied between claimants, there was a broadly shared view of the need for increased clarity on the level of payments and an acknowledgement of what the settlement represented. Some claimants felt that the small monetary payments minimise the acknowledgement of their story, and many identified the impact through adult life and the costs related to this (e.g., counselling) as a better measure of payment levels.

A number of claimants also sought increased clarity on the proposal for set payment levels in the new claims assessment process. There was a view that some categorisation of payments was positive. However, claimants felt there needs to be more clarity on the basis of the categories. Some claimants made reference to perceived inequality between claims by gender and type of abuse.

Many claimants spoke of the need for ongoing counselling, which has an associated personal financial outlay. Access to subsidised care through the Accident Compensation Corporation (ACC) varies according to the type of abuse suffered by claimants and it was felt that MSD should consider this in the settlement.

### ***Areas of improvement identified by claimants***

- Determine payment levels by the impact of the abuse rather than the type of abuse experienced.
- Explore options for any claimant to have access to subsidised mental health support regardless of the type of abuse suffered.

### **3.3.3. Letter of apology**

Claimants had different perspectives on the letter of apology. While there was an acknowledgement that the letter could be important to some claimants, most claimants found the letter to either be meaningless at best (e.g., something to joke about with friends) or insulting at worst. There was a view that only an apology from the individuals involved would be of any meaning and that an apology from a civil servant was of little to no relevance to claimants.

There was also some discussion about the language used in the letter of apology where claimants had received an apology phrased in the condition (i.e. “if you have suffered, we apologise”). This was broadly dismissed as inappropriate, insulting, and counter to the purpose of the claims resolution process. It was also felt that when the financial settlement offer was not perceived to match the level of harm incurred, a bureaucratic letter of apology did nothing to support ‘resolution’.

### ***Areas of improvement identified by claimants***

- Consider providing a hand-written letter of apology as this is seen as somewhat more genuine.

### **3.3.4. Post-resolution**

As noted previously, many claimants initially saw the claims resolution process as a pathway to helping inform current social work practice, to avoid any other children suffering a similar experience to theirs. There was broad agreement that instituting some sort of feedback mechanism for claimants to inform policy development at Oranga Tamariki would be beneficial towards ‘resolution’ and healing.

Claimants also mentioned the need for ongoing support following the closure of the claims resolution process. Some claimants thought it would be useful to continue to have access to support services after their claim was resolved, including counselling through MSD or through alternative arrangements as already suggested above. However, by and large, the need for peer support was broadly shared.

For many, the engagement workshops were the first time they had met another claimant who had both similar experience in care as a child and who was also making a claim to MSD. Claimants agreed that people with similar lived experience could be a useful resource for support and guidance through the process and beyond its closure. Claimants hoped this would be available in the future through MSD or another facilitator.

***Areas of improvement identified by claimants***

- Develop a feedback loop for claims resolution to policy in Oranga Tamariki.
- Establish a peer support network that claimants can choose to connect with.
- Consider providing access to other mental health support services after claim closure.