

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
		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 (medium levels)	Inaction (high levels)	Inaction (high levels)
<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 examples of commonly recognised inaction, insufficient or inappropriate action, rather than a complete list.</i></p>				

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 practice failures</u>	<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 practice failures</u>	<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 practice failures</u>	<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.