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## How to identify and write an allegation

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Owner: General Manager Historic Claims

*Understanding a claimant's concerns and identifying allegations is fundamental to ensuring that we are responding appropriately to a claim, and addressing a claimant's concerns. A claimant's account of their childhood may involve a range of experiences; some of which purely form part of their story or narrative about their childhood, and some of which will form the basis of their claim.*

*Claimants are not expected to share their experience in a way which neatly forms allegations; our job is to understand the issues and record these in a way that accurately reflects the claimant's concern and ensures that the Historic Claims process can respond to it. Where ambiguity exists, it is important that we provide opportunity for claimants to clarify their concern.*

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### What is an allegation?

An allegation is an issue or event identified by the claimant while involved with Child, Youth and Family or its predecessors, that they want addressed and acknowledged in some way. This may be in relation to abuse or practice failures.

### Identifying allegations

Prior to starting an assessment:

- Review the relevant sources that will help identify the claimant's concerns (i.e. listen to the interview audio recording, review the initial referral and all relevant file notes and emails in the claimant's EDRMS file, review Letter of Offer and Statement of Claim as relevant). It is important to review all relevant documents to ensure that all allegations are captured.
- Take note of any questions or areas of significance to the claimant. This allows us to gather information from the claimant's records to be able to respond to their questions, as well as note areas of significance to them.
- Ensure that the identified allegations recorded in the Historic Claims Application are consistent with those in the source documents before beginning an assessment.

If further information is required from the claimant in order to understand their concerns prior to beginning an assessment, consider whether a further discussion with Claimant Support may assist (for direct claimants), or whether clarification can be sought through the claimant's representative. Note that any contact with a claimant's lawyer must be made through appropriate channels, and not made directly by a Claims Assessor.

## Writing an allegation of abuse

The allegation should clearly describe what the claimant says happened. Historic Claims recognises that claimants may not always be able to recall specific details of an incident of abuse. Though where the information has been provided, the allegation description should include:

Detail to include (where available)	E.g.
Who	The name and role/relationship of the alleged perpetrator. If the full name was provided by the claimant, refer to the name by first and last name (as opposed to using "Mr" or "Mrs").
Where	The residence, Family Home, placement or relevant location
What and how often	A description of what happened (e.g. <i>hit across the head on two occasions</i> ). Be specific, and where possible, the claimant's words should be used in the description. If the claimant has described an assault as having been bashed, use the word " <i>bashed</i> " in quote marks. Any descriptor words about abuse should be from the claimant's language, with quote marks.  Similarly, short, relevant, descriptions provided by the claimant can be used (e.g. That the foster mother " <i>started beating me all the time</i> ", hit him with " <i>a wooden spoon... anywhere she could... I remember her breaking it over my arm once</i> ").
When	This may be articulated by the claimant by age (e.g. <i>when he was eight</i> ) or the context (e.g. <i>after a football match</i> )
Why	There may be context provided by the claimant about why the event took place (e.g. <i>because he talked back to the caregiver</i> )
Examples of abuse allegations	
<ul style="list-style-type: none"> <li>Kevin has alleged that his Family Home caregiver, Mrs P<sup>1</sup>, "whacked" him over the head on a number of occasions.</li> <li>Sarah recalls two instances where a staff member at Kingslea sexually assaulted her. She cannot recall his name. "He would come into my room after lights out...I remember his hand over my mouth...the first time he made me get him off, but the second time he raped me".</li> <li>That when she was eight, Te Aroha's caregiver, Mr H, would scream at her "all the time...for nothing....he called me useless, a cow and told me that's why my parents wouldn't want me back".</li> </ul>	

Full passages taken from a claimant's lawyer or an interview transcript are not required. The relevant information is lifted from the claimant's account to develop a statement (allegation) that accurately reflects their concern in a way that Historic Claims can respond to.

<sup>1</sup> These are fictional examples. For the purpose of this practice guidance, surnames of either fictional claimants or alleged perpetrators will not be used to prevent a person from incorrectly identifying themselves in drafted examples in the event they coincidentally share the same name.

## Writing a practice failure allegation (inaction and inadequate practice)

Claimants are unlikely to reference "*practice failure*" during their own account of their experience. This is Historic Claims language. Though this term may be more commonly referenced in Letters of Offer for legally represented claimants.

Claimants may talk about something that did happen (e.g. "*I told my social worker that Mr J had hit me – she left me in that placement and never did anything about it*") or did not happen (e.g. "*I was in that placement for years – no one ever came to check on me*"). Where noted by the claimant, record any abuse consequence they have identified as a result of the failure, as this assists to determine whether an allegation is assessed as inaction.

### Examples of practice failure allegations

- That Mavis spent three nights in the secure unit at Weymouth. She only had one meal during that time.
- Tamati told his social worker when she visited once that his caregiver had kicked him. He remembers that social worker saying "that's no good", but she never did anything more about it. Tamati says that the abuse did not stop, and actually got worse.
- Jenna cannot recall any social worker visiting her while she was placed at family/whanau caregivers Mr and Mrs F's home. She was there for around four years. "I think someone came once and met with Auntie.....but they never talked to me...".

We will then define this as an alleged practice failure (either as inaction or inadequate practice, depending on whether the failure contributed to alleged abuse) for the purpose of our assessment.

## Statements which are not allegations

Statements made by the claimant about the care they received while in their home and before coming into care are part of their story or narrative, and not an allegation (unless they are clearly stating there was some fault on the part of Child, Youth and Family or its predecessor). For example "*Living at home was hell – it was like Once Were Warriors*" is not an allegation. Though "*Living at home was hell – it was like Once Were Warriors. There were social workers always visiting but they never did anything*" is an allegation.

Not recording this as an allegation does not prevent us from identifying failures ourselves through the course of assessing a claim.

Claimants may also have questions about decisions that were made about their time in care or involvement with Social Welfare. Unless the claimant raises a concern about the particular decision, or the issue is the subject of a noted allegation through the course of an assessment, these questions are considered for the purpose of supporting claimants to understand their care experience, and are not considered to be allegations.

## Addressing multiple allegations about one situation

Sometimes claimants will make multiple allegations in one statement, such as "*He was placed in secure in inappropriate conditions, without adequate cause*". These are two different allegations; one of inappropriate conditions and one that he should not have been placed in secure (i.e. a breach of policy/regulations). These will be responded to separately and have two separate outcomes (as they relate to two different issues). For

further information about how to respond to multiple allegations made about one placement or alleged perpetrator, please see "*Practice guidance – Duplicate Allegations*".

### **Where there is more than one abuse type as part of an allegation**

Emotional abuse is a likely partner to most abuse experienced. An incident may involve verbal abuse (as a form of emotional abuse) escalating to physical abuse (e.g. "*The caregiver called me a bitch, dragged me across the room and slammed me into the wall*"). The verbal abuse is not recorded as a separate allegation. This would generally be addressed as an allegation of physical abuse. Where emotional abuse occurs in the context of physical or sexual abuse, the emotional aspects do not need to be documented separately – they make up the contextual part of the recorded allegation. For further information, please see "*Practice guidance – Emotional, psychological and verbal abuse allegations*".

Similarly, where a claimant states that in the course of being sexually assaulted they were also hit, the type of abuse assessed is the primary allegation, which we ideally have an understanding of from the claimant's description of the event. The focus is on acknowledging the incident, as opposed to trying to break it down into component pieces.

There may be small numbers of exceptions which require case-by-case consideration. Such a situation may, for example, be where in the course of being sexually assaulted the claimant suffered a serious physical injury from a physical assault during the alleged abuse incident. It may be appropriate in such a case to separate out both types of assault for the purpose of assessment, and respond to each separately.

### **Addressing non-specific allegations**

Addressing allegations where the claimant has spoken in a non-specific way about a number of things happening over a number of placements can be challenging.

*"I went into Weymouth about three different times and always got the bash from staff"*. Without further specific details from the claimant, this would be recorded as one allegation, though if records confirm three placements, we can note that this is alleged to have occurred over three placements.

Similarly, if the claimant says *"I went into Weymouth and got the bash from Mr S, Mr B and Mr J"*, then in the absence of further details and lack of specificity about the nature of the individual assaults, this also would be recorded as one allegation, as opposed to three separate allegations of three separate perpetrators.

In both of these types of non-specific allegations, the claimant's reported experience still needs to be considered in the claim assessment (e.g. alleged abuse by multiple staff at Weymouth). What is important is that the allegation outcome is able to be translated appropriately into any payment rationale.

If the claimant states *"Once, one of the staff members even raped me"*, this would be a separate allegation. One allegation in relation to the non-specific physical abuse over the three placements, and one specific allegation of serious sexual abuse.

### **Multiple placements, with clearly defined abuse at each placement**

If the claimant is clear about specific instances of abuse in multiple placements at the same Family Home/residence/foster placement, these should be treated as separate

allegations. Each may have their own specific details and circumstances and depending on severity may require different assessment thresholds.

**Letters of Offer – represented claimants**

Represented claims will typically involve receiving a Letter of Offer (as well as a Statement of Claim when the claim is filed in court). These are often lengthy in nature, as it is the claimant’s opportunity, via their lawyer, to share their care experience and these will often refer to the claimant’s social work records in detail. Letters of Offer may include lengthy passages which refers to the claimant’s journey through care as noted in the social work records, as well as noting concerns. This can make it challenging to identify what the concerns are, and require care to ensure that we are responding to the claimant’s concern about what MSD is responsible for.

For example, the comment *“It is unclear why his court status was revoked”* is not an allegation in and of itself. Though, if the context surrounding that statement involves concerns about this decision or articulates a consequence for the claimant, then this would be identified as an allegation.

Letters of Offer do not always provide the claimant’s own words, but it will include their experience, as shared with their lawyer. Judgement is needed in how language from a Letter of Offer reflects the claimant’s concern. The full passage is not required.

Rather, consider the core components of the passage, to separate out specific allegations to respond to, and those which can be grouped together as a theme of abuse or failure. Where a number of comments relating to a similar theme are identified (e.g. a number of notifications not adequately responded to), it may be suitable to collapse these into one practice failure (e.g. *“On a number of occasions between 1992 and 1995, CYFS failed to adequately follow up reports of concerns in relation to Dillon’s safety in his parents care. This included concerns about physical abuse and exposure to gang and drug activity in the home”*).

**Noting abuse or practice failures not alleged by the claimant**

In the course of assessing a claim, the Claims Assessor may identify from the records incidents of abuse or practice failures which the claimant has not talked about. It is correct to add these as additional instances of abuse or practice failures, though clearly recording that these have been identified by the Claims Assessor through the course of assessment. A Step 2 analysis is only required if the nature of the identified issue meets the usual criteria for requiring this higher assessment threshold. Sufficient detail should be provided to identify the information that has led to a noted practice failure or abuse allegation. For noted practice failures, relevant policy and practice standards that have not been met should be identified.

**Approve** practice guidance – How to identify and write an allegation

Approve/Decline



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Date