



Responsible Adults, Inaction and Inadequate Practice

Last review date: October 2021 (new practice guidance)
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Owner: General Manager Historic Claims

Allegations fall into one of three categories:

- **Abuse by responsible adult**
- **Inaction, insufficient action or inappropriate action**
- **Inadequate practice**

As part of the current claims model, Historic Claims has categorised the issues for which MSD is responsible for the purpose of the Historic Claims process (though not necessarily legally responsible) so they can be organised into payment categories. Examples of allegations that fall within these categories can be found in Appendix A.

The Historic Claims process is an Alternative Dispute Resolution (ADR) process and, as noted in the MSD Historic Claims Business Process and Guidance, does not involve establishing facts and liability in the same way a court does. This document should be read within that context.

Abuse by responsible adult

Responsible adults are agents of Child, Youth and Family or its predecessors¹ who have care and protection responsibilities for the child. Such agents are caregivers, staff at Family Homes or Residences, social workers or other employees of the service. Staff or caregivers employed by NGOs or Iwi Social Services contracted to provide services on behalf of the Ministry would generally also fall into this category where the Ministry would otherwise have responsibility.

While these types of roles are easily identifiable as responsible adults for the purpose of the Historic Claims process, some relationships are less clear and exceptions can exist. While not possible to outline all possible exceptions, the following factors support us to determine responsibility:

- Legal status of the child
- Funding of the placement
- The role of the alleged perpetrator
- Social Welfare's role with the child, in making a placement, and/or monitoring this placement; and
- Social Welfare's contractual relationship with the alleged perpetrator.

¹ For the purpose of this practice guidance, the various iterations of social welfare agencies will be referred to collectively as social welfare.

Example

The Ministry does not generally accept responsibility for the actions of medical practitioners or health staff, even when the claimant was under the care, custody and guardianship of Social Welfare and placed in a social welfare facility. Complaints about medical practitioners is generally the responsibility of an organisation within the Health sector (e.g. the Ministry of Health) to respond to, and we can support claimants to engage with their process. On occasion, Social Welfare employed or contracted a doctor to a residence (which is different to a doctor providing health services to children in a residence through a Ministry of Health contract or arrangement). Where clear evidence exists that a doctor was contracted by Social Welfare to a residence, allegations of abuse made against them may be taken into account.

Who are not responsible adults

Generally, all those who have not been given formal legal responsibility towards the child or young person by social welfare or recognised as having that role by the state such as those related to, or living with, responsible adults. See above for possible exceptions.

Parents are not regarded as “responsible adults” by this definition and framework (even when the child or young person was in state care, custody or guardianship).

Seeking advice on responsible adult status of an alleged perpetrator

Seek advice from Lead or Senior Claims Advisor, Team Leader and/or from MSD Legal. Before doing so, establish as far as possible the above factors outlined to support decision making in this space.

Practice failures relate to both Inaction and Inadequate practice

The following two categories (Inaction and Inadequate practice) are both practice failures. The difference being:

- inaction refers to a practice failure by a responsible adult that contributed to the alleged abuse of the child or young person
- inadequate practice refers to a practice failure by a responsible adult that affected the standard of care the child or young person experienced but did not contribute to alleged abuse.

The identified practice failures may be the same (e.g. a lack of visiting, an absence of caregiver assessment). The critical difference when determining whether a practice failure is inaction or inadequate practice is whether the practice failure contributed to abuse or neglect.

Inaction, Insufficient Action or Inappropriate Action

There are three types of ‘action’ above that are summarised into the one word of inaction for the purpose of our model. Inaction is simply a relationship between a failure on the part of Social Welfare (namely a responsible adult), that contributed to abuse or neglect of a child or young person.

Inaction means that Social Welfare did not respond (or respond adequately) where it was legally required to and/or policy or accepted practice directed it to (e.g. a failure to investigate or act on a reported concern). *Insufficient action* may be that action was taken but not to the extent that would reasonably be indicated or required to protect the

child (e.g. an inadequate response to an allegation of abuse). *Inappropriate action* may be a decision made by a responsible adult that then contributes to alleged abuse or fails to protect from alleged abuse (e.g. a young person is required to room with another young person who has known harmful sexual behaviour).

We do not expect claimants to have knowledge about the service they were entitled to receive or what the Ministry's responsibilities were. Our role is to understand whether the Ministry's action or inaction contributed in some way to abuse that a claimant has alleged. In this way we establish a reasonable link between the failure and the abuse the claimant has alleged.

When claimants share their account of their care experience, it is important that we take steps to understand from the claimant's perspective what was happening at the time of alleged abuse (e.g. if the claimant describes an initiation beating occurred upon being admitted to residence, it is important to try to understand staff awareness or involvement when this happened). We also consider records to determine any noted inaction that is not visible to the claimant (e.g. a failure to assess a foster parent, who is then alleged to have sexually abused the claimant).


Inadequate Practice

Inadequate practice occurs when a responsible adult fails to comply with relevant policy and/or legal obligations. We know this has an impact on the standard of care the claimant experienced and their rights while in care. For the most part, inadequate practice relates to Social Welfare employees where they are guided by legislation, policy and practice requirements. However, there may be times that it is appropriate to include caregivers (as responsible adults) where they failed to follow policy.

Examples of where inadequate practice occurs is when there is an absence of visiting, engagement, planning, support, approving and assessing from Social Welfare agents. This inadequate practice could have resulted in multiple placements, schooling instability, a sense of isolation or a lack of belonging and identity.

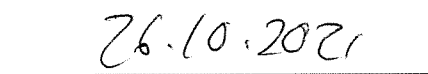
Approve Practice guidance – Responsible Adults, Inaction and Inadequate Practice

Approve/Decline



Linda Hrstich-Meyer

General Manager Historic Claims



Date

Appendix A

Abuse by Responsible adults

- Physical assaults by staff at a residence
- Sexual assaults by Family Home caregiver
- Staff were verbally abusive
- Neglected by a foster parent
- Physical and emotional abuse by foster parent

Inaction contributing to abuse

- She was raped by her Grandfather on multiple occasions. No one believed her even when she fell pregnant and in case notes the social worker documented that he thought she was a liar [*Failure to act*]
- Physically abused and neglected by parents. Child, Youth and Family was notified several times but there was no investigation [*Failure to investigate*]
- When father was drunk he was a very violent man; everyone in the family was beaten regularly. The Ministry investigated but put it down to strong discipline. [*Failure to take sufficient action*]
- Sexually abused by the son of the foster parents. Social workers never visited her in care, and she had no one to tell she was being abused. [*Failure to visit*]

Inadequate practice

- There is little evidence of any active monitoring during this first period of her placement [*Failure to monitor*]
- He doesn't remember social workers visiting him or ever talking to them [*Failure to visit*]
- Uncle was a gang member and he shouldn't have been put in this placement without a background check [*Failure to assess safety and/or placed in an unsafe/inappropriate environment*]
- She needed glasses and the dentist, but the foster mother didn't take her. [*Failure to access health services*]
- Brother was placed with him the first two years in care, but then was moved and he doesn't know why, and he didn't see him for years later. [*Failure to support family/whanau contact, Failure to inform/involve in decision making*]