



Settlement Documentation

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There are three documents that need to be drafted when preparing settlement documentation:

- Letter of Offer. This letter sets out the Ministry's response to a claimant's claim. It records the allegations that are being taken into account and those that are not, along with reasons for why not. They also include the Ministry's settlement offer and provide administrative details around settlement.
- Settlement agreement. This records the agreement reached between the claimant and the Ministry, including that the agreement is being entered into as "full and final settlement". It is legally binding on both the claimant and the Ministry.
- Apology letter. This is a personalised apology letter from the Chief Executive of the Ministry acknowledging a claimant's time in care. There is also a covering memo from the General Manager to the Chief Executive summarising the claimant's experience.

Letter of Offer

This letter is the Ministry's formal response and offer to the claimant. Although this means that care must be taken to align with language used by the Ministry in the management of claims (e.g. taking allegations into account), the letter can still be personalised for the claimant in a way that shows compassion and provides a meaningful response. For claimants who choose not to meet with the Ministry (these are often legally represented claimants), the letter of offer is generally one of the main interactions they receive from the Ministry and the only feedback they will receive from the Ministry on their claim. It is therefore important that care is taken in crafting this response.

While some sections of the letter of offer are standardised to ensure consistent messaging for claimants, the template for this letter allows scope for personalisation (e.g. in the summary of concerns section). Additional sentences can also be added if appropriate (e.g. if we have verbally offered to connect the claimant with another agency to register a separate claim, this could be reiterated in the letter).

There are a number of important things to think about when writing a letter of offer. These include:

- Consider the template to use - There are three main templates; direct, represented (but unfiled) and filed represented claimants. There is also less regularly used templates including one where a nil payment is being made and one for filed claimants where the Ministry of Education is a defendant. If writing to an estate, discuss this with the Lead or relevant Senior Claims Advisor as some changes will be needed.
- How would the claimant like to be addressed? Direct claimants may have previously indicated to Claimant Support a preference (e.g. by first name or surname).
- In the summary of concerns section, think carefully about how you can summarise the claimant's concerns in a way that is meaningful to them. For example, if the claimant has a primary concern or there is part of a claim that is particularly important for them to have addressed, make sure this is mentioned in the summary. Likewise, you may not need to include a minor allegation that did not seem important to the claimant or is more peripheral to their primary concerns. This part of the document is intended to reflect the claimant's reported experience (in a general sense). Therefore, this can include significant aspects of their reported experience which the assessment of their claim has or has not taken into account. The length of the summary section will likely differ for each claimant depending on the nature of their claim, but in most claims a paragraph would be a reasonable length.
- In most cases, 'first person' language should be used (such as "you" and "your"), including in the appendix. This is the case for both direct and legally represented claimants. The letter is written to the claimant rather than to their lawyer, where relevant.
- Think carefully about the level of detail provided in the allegations in the appendix. It is ok for the allegations to look slightly different than what has been recorded in the assessment. For example, it will not usually be necessary to include every specific detail of the alleged abuse, especially if it is sensitive in nature (e.g. sexual abuse).
- Given the historic claims process is an alternative dispute resolution process, it does not seek to establish the facts of a claim in the same way a Court does. We do not 'accept' allegations, but rather we determine whether we will take certain allegations into account for the purposes of making a settlement offer. As a result, care needs to be taken with including specific names of alleged offenders. Names will not usually need to be included in the appendix if there is another way of referring to them "e.g. *the Titahi Bay Family Home caregiver punched you...*" or "*staff at Epuni failed to intervene when you were receiving an initiation beating*". Where you are proposing to include an alleged perpetrators name, consult with your Team Leader and/or Lead or Senior Claims Advisor for advice.

- Carefully consider the reasoning to be included for why allegations have not been taken into account. Is it clear? Is the tone of the response empathetic (remember that this is a section that explains why the Ministry has not taken into account a part of their experience which may feel very personal to them)? Have you included enough detail? Have you used language that the claimant will understand?

Settlement Agreements

A settlement agreement is a legal document which is binding on both the claimant and the Ministry. It is not the Ministry's role to provide advice to the claimant on the agreement. Though Claimant Support should make direct claimants aware that they can seek legal advice on the terms of the agreement before they sign it. As noted in the letter of offer for direct claimants, the Ministry will pay up to \$400 for the claimant to consult a lawyer. If the lawyer requires additional time to provide advice, they can contact the Ministry to discuss this. If a settlement agreement is being handed to a claimant at an in-person feedback, the Claimant Support Specialist should strongly encourage claimants to take away the document to read it and consider before signing. It will not generally be appropriate to allow a claimant to sign the agreement at feedback.

If Claims Assessors have any questions about the wording to be used or the template, this can be discussed with the Lead Claims Advisor or the relevant Senior Claims Advisor.

Apology Letters

For many claimants, apology letters will be extremely important to them and may be more significant than the monetary payment. Therefore, care should be taken with the letter to ensure that it is personalised, empathetic and as meaningful as possible to the claimant.

Tips to personalise an apology letter:

- Has the claimant asked for the letter to cover any particular matters? If a feedback meeting took place, check the meeting notes for any comments about this.
- Does the claimant have allegations that they were particularly concerned about that have been included for the purposes of settlement? If yes, these should be included.
- Try to use the claimant's language where possible. For example, if the claimant said in their interview or letter from their lawyer that they felt "*let down by Social Welfare*", these types of phrases can be reflected back in the letter.
- Refer to specific residences or programmes the claimant attended where they have raised concerns.

An appendix to this guidance provides some example sentences that can be incorporated or used as inspiration for a personalised apology letter.

Apology letters should not contain any language which suggests that we have accepted that the allegations have been proven. Instead, statements focussing on what the claimant has raised with the Ministry should be used. For example, "*you described abuse by staff while living at Kohitere....*"

Specific details of abuse, allegations or sensitive information are not generally included in an apology letter, unless the claimant has requested this. If there is a request for this detail, this should be noted in the apology letter covering memo. Do not use adjectives such as "serious" or "significant" to describe abuse, especially when it has a defined

meaning in the assessment process. If it is to be used, the reasoning should be included in the covering memo.

Names of alleged perpetrators of abuse are not to be included in the letter.

Appendix: Example sentences for apology letters

The following examples may assist when customising an apology letter. It is important that the letter reflects the claimant's own words/language and specific experiences. You do not have to use these examples exactly. The letter should not repeat the same words or sentiments in different places and should be tailored to the nature of the claim.

Introductory sentences:

- Thank you for having the courage to share your deeply personal experiences with us.
- Thank you for having the strength to contact us and tell us about your time in care.
- Thank you for sharing your experiences with us.

Sentence openers for framing allegations:

- You described experiencing...
- You told us...
- You raised concerns about the social work practice provided to you
- You describe how you were...
- You described several incidents of...
- You shared your memories of...

Some examples of how to frame allegations

- You described experiencing abuse by several staff members at Kohitere and being punished inappropriately by staff members.
- You told us that you remember abuse and being mistreated by your caregivers in a variety of placements. You also described being hurt by other residents while at Eponi Boys' Home.
- You described abuse while living with a foster family and how this left you feeling distressed and alone.
- You identified the challenges you faced as a young person and raised concerns about the social work provided to you during this time.
- You have also raised concerns about the social work provided to you and the decisions made in relation to your care.
- You told us that you continued to be hurt and felt unsafe when you were returned to your mother or father's care, and that you believe social workers did not act to keep you safe.

Sentences responding to allegations:

- I am very sorry that these are the memories you carry from your childhood.
- I acknowledge that these experiences were incredibly difficult to share, and I understand that they continue to impact your adult life.
- No person should be led to believe that abuse is normal.
- I am very sorry for the distress that you experienced as a child.
- I can only imagine how difficult these years were for you.

- This must have been a difficult time for you.
- This must have been a very distressing time for you, and I am truly sorry for that.
- I know this must have been a very difficult thing to do, and I appreciate the strength it took to share some very distressing memories.
- I would like to acknowledge the incredible strength and bravery you have demonstrated.
- I have a lot of admiration for you and all that you have overcome.

Including positive comments

When including positive comments, keep the focus on the claimant’s own achievements in childhood or adulthood; avoid examples of a positive time in care as this can be seen as minimising the claimant’s negative experiences of their time in care. The apology letter should unreservedly apologise and should not seek to remind the claimant about good things that also happened, or to balance a negative experience with a positive one.

Examples to avoid

Avoid phrasing which could imply that we disbelieve the claimant (e.g. “I am told that you believe” or “I appreciate that you believe you could have been”).

Be careful not to invalidate the claimant’s experience or suggest that how they feel about their experiences is incorrect or should be different. For example, “no person should remember their childhood this way” could imply that the onus is on them. Instead you could say “No person should carry these memories of their childhood...”

When referencing how a claimant feels about their experiences, draw on their own words. We should not be telling any claimant how we assume they feel, but rather reflecting that we have heard what they have told us.

Approve practice guidance – Settlement documentation


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Approve/Decline

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 Date