



Final Report

Review for Whaikaha of policies, processes, and practices for managing complaints about IDEA Services Limited

Rachael Schmidt-McCleave

FINAL REPORT DATED 15 OCTOBER

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	1
INTRODUCTION	1
SUMMARY OF FINDINGS & RECOMMENDATIONS	4
THEMES OF WHAT I WAS TOLD	12
TERMS OF REFERENCE	14
REVIEW PROCESS	15
TOR (a) – Whaikaha’s role in complaints	17
TOR (b) - When Whaikaha should act	26
TOR (c) – IDEA’s complaint process	28
TOR(d) – Whaikaha’s processes	34
APPENDIX A – Context & Legal Framework	36
APPENDIX B – IDEA Complaints Process	45
APPENDIX C – IDEA Sample Complaints Process	48
APPENDIX D – Other Consultation	61

Kī mai koe ki ahau, “He aha te mea nui o tēnei ao?”

Māku e kii atu, “He tāngata, he tāngata, he tāngata”

***Should you ask, “What is the most important thing of this world?”
I would reply, “It is people, it is people, it is people”***

Acknowledgements

1. IHC and IDEA have been extremely forthcoming with all relevant information. I acknowledge the work that was undertaken to compile the extensive written material and the willingness of IHC and IDEA’s Board Members and Executive Teams to meet with me to provide information relevant to the scope of this Review.
2. I acknowledge the individuals from the HDC, Whaikaha, and the Royal Commission of Inquiry into Abuse in Care for their valuable insights into matters relevant to the scope of this Review.
3. Finally, and most importantly, a number of individuals who are supported by IDEA and their whānau have made a valuable and significant contribution to this Review through their time and willingness to provide me with detailed written information and to share their stories which often involved discussions about personal and highly sensitive issues. I am grateful to all of these individuals for their willingness to share this information and am extremely privileged and humbled to have heard and held their kōrero.

Introduction

4. In commencing this report, I borrow the quotation from Sir Robert Martin employed by the Abuse in Care Royal Commission of Inquiry:¹

When you are shut away from the world you are not treated as a real person with a life that actually matters.

5. I also refer to the following important words from the Preamble to the United Nations Convention on the Rights of Persons with Disabilities², recognising and considering (*inter alia*):

(m) [the] valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

¹ <https://www.abuseincare.org.nz/investigations-and-hearings/disability-and-mental-health-2/investigation-into-abuse-in-state-and-faith-based-disability-care-settings/>.

² Adopted 12 December 2006 at the 61st session of the General Assembly by resolution A/RES/61/106

(n) [the] importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(o) [that] persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them...

6. At the forefront of my mind throughout this review were the voices of the people supported by IDEA Services. Their lives matter. They are human beings. In many cases, they lack a voice or an ability to express concerns. Yet they are critical and valued members of our society, with hopes and dreams like all of us, and who love, and are loved, and wish to live a full and rewarding life. I was mindful of respecting that fundamental principle at all times in the work I did on this review, and I thank Whaikaha, the beautiful people it represents, and the families and carers of those people, for the opportunity and the privilege of being able to carry out this work. I also thank and acknowledge IDEA Services, who have been more than cooperative and helpful throughout my process.
7. On 2 March 2023, I was engaged by Whaikaha | Ministry of Disabled People³ to review, from an independent perspective, the policies, processes, and practices for managing complaints about IDEA Services Limited's (IDEA) contracted delivery of disability support services.
8. By way of background, and as recorded in my letter of instruction, between November and December 2022, Whaikaha received information via formal and informal channels and from the media about the standard of disability support services provided by IDEA, including its engagement with the people that IDEA supports and their whānau. As a result, Whaikaha engaged with IDEA which provided Whaikaha with a significant amount of information about their policies and processes for managing complaints, their engagement and consultation with the people they support and their families, and their response to the issues raised.
9. This report records my findings and recommendations from the Review.
10. Before setting those out, however, and embarking on my analysis, I want to make some general comments about what I have heard. Many participants described longstanding involvement with, and support of, IHC and IDEA Services. In many cases this involvement dates back decades and the communications reflect deep knowledge of the history and purposes of IHC and IDEA Services. The participants had unique insight not only from their first-hand experiences as service users or whānau of service users, but also from their involvement in IHC branch/regional committees, national fundraising committees, and on-the-ground initiatives such as opportunity shops.
11. Many participants emphasised their support of an appreciation for IDEA staff, describing them in terms such as *“special to us”* and *“an essential part of our family.”* Others were

³ In this document I refer exclusively to Whaikaha. Whaikaha was created on 1 July 2022. Prior to that the Ministry of Health had responsibility for commissioning the services provided by IDEA Services and held the contractual relationship with IDEA Services. All references to Whaikaha that relate to events before 1 July 2022 should be read as referring to the Ministry of Health.

equally emphatic in their support of IHC itself, making comments like “*My wife and I remain staunch supporters of IHC and do not intend to abandon the organisation as many parents have done.*”

12. There were, however, also themes of distrust and unhappiness that I heard from many participants.⁴ While it is beyond the scope of this review to investigate the individual stories I heard, I wish to record some of these themes upfront to acknowledge the participants and their kōrero to me. I am very conscious that IDEA has responded to many of the specific issues raised, and I have included more detailed analysis in my Appendices but wish to be clear that, regardless of specific details, the perception of what happens when one complains is critical to all organisations in the sector moving forward to regain any trust that has been lost. In fairness I also note, as I do in my summary of themes, those who came forward to me had had negative experiences of IDEA, and I was not required by the review to seek feedback from those who did not elect to come forward. I also note that a proportion of those who came forward to me, roughly about half of the participants, no longer have a relationship with IDEA.
13. Nevertheless, whatever the outcome of this review, it is *absolutely vital and critical* that both Whaikaha and IDEA work to rebuild the trust of the community they serve. Without the rebuilding of this trust, those concerns repeatedly raised with me by participants will continue to be felt and experienced, and the sector will not move down the ara towards making Enabling Good Lives a reality. I am confident, from the interactions I have had with them, that both Whaikaha and IDEA have the goodwill and intention to rebuild this trust, and I urge them to immediately take steps to do so. I hope this review provides some tools to enable that to be achieved.
14. It is critical that the position of the disabled community is recognised and prioritised by all who work within the sector, both in terms of the inherent imbalance of power between service users/their whānau and service provider/funder, as well as the emotional impact of the situations participants have told me about. Service providers and funders must recognise accept that they have a position of authority and power, which, due to the nature of concerns held by users, can lead to the community feeling powerless. This frustration and lack of power may impact the way concerns are expressed but this should *never* diminish the legitimacy of how those concerns are felt and experienced, or the rights of people to be heard. It must never justify condemnatory, or dismissive, letters to, or interactions with, service users or their family members from those at the top.
15. The names of individuals who receive support from IDEA and their whānau who contacted me or provided documents have been anonymised. While some participants indicated that they were happy to be named, I do not consider it necessary to include their personal information for the purposes of this report, particularly in light of some of the personal and sensitive matters that were raised.

⁴ Approximately 50 IDEA service users and their whānau, as well as other carers and participants in the system.

Summary of Findings and Recommendations

16. In summary, my findings and recommendations are:

- (a) Overall: While all participants to my review participated in good faith and were extremely helpful, and there was much support expressed for Whaikaha, IDEA and other service providers, nonetheless what was told to me by all shows that there exists much distrust and unhappiness within the sector, and common themes experienced and feared by service users and their families.

The common themes expressed to me from all disabled persons and their families who spoke to me included the perceived stifling of complaints, fear of retaliation for raising issues, terse and threatening interactions and communications, delays and failures to respond to inquiries, a perceived culture of control and institutionalisation, as well as more specific concerns related to access to services, closure of day bases, withdrawal of services, Covid-19 lockdown concerns, the bath ban, issues with food, staff and permission to visit family members or take them on holidays.

There has also been correspondence with some participants to the review which has come from the Board and/or Executive of IDEA/IHC and which is not respectful and can be interpreted as retaliatory or condemnatory.

Whatever the actual facts behind these concerns are or are not, the themes were universal and show there is a level of distrust which exists in the community towards both Whaikaha and service providers including IDEA.

As an overall recommendation, I urge Whaikaha and IDEA to work together to rebuild the trust of the community they both serve. This is vital, critical and urgent mahi, which I hope some of my more specific recommendations will assist with.

In undertaking this trust rebuild, the disabled community, and their whānau, must be prioritised at all times. Any retaliatory or condemnatory behaviour whatsoever at any level must not be tolerated from here on in and that message ought to be conveyed from the Board itself.

Further, rebuilding trust from the community is something that must occur through engaging the community in the solution. Taking action that is not visible to the community will not rebuild the necessary trust.

(b) Term of Reference (a):

- (i) Whaikaha's role is to ensure performance by the service provider via a range of contractual remedy mechanisms, and best practice expectations, which become increasingly formal in the case of on-going non-performance.
- (ii) Whaikaha's role is currently not clearly articulated and therefore understood in relation to when and how it should respond to concerns and complaints raised about service delivery, due in part to its relatively new status, partly to its role as funder not provider, and partly to a lack of consistent documents and processes outside of the Outcome Agreement itself.
- (iii) This results in service users conflating failings they experience as being attributed both to the service provider *and* to the funder and a feeling amongst service users and their families that their voices have been lost in the complaints process.
- (iv) When complaints are perceived as being handled poorly by a service Whaikaha funds, service users and their families perceive Whaikaha as failing to be the disabled person's ally, or to set conditions in such a way that the disabled person's voice directs what occurs in their life.
- (v) Where the voices of disabled people are lost in complaint processes the absence of Whaikaha, as the agency charged with ensuring that the voices of disabled people direct their own lives, is experienced as a failure by Whaikaha; and
- (vi) Where a complaint is raised with Whaikaha and it is mishandled, or processed rather than resolved, or where Whaikaha's actions is perceived as being ineffectual in achieving ongoing change, that ineffectualness

breaches the faith that the community has in Whaikaha as the institution of government charged with standing up for their wellbeing.

(vii) There is an ad hoc and inconsistent approach by Whaikaha to service providers raising issues or requesting information. The current engagement approach does not reflect a proactive and collaborative dialogue about resolving issues, and there is a level of mistrust within both organisations because of the lack of clarity around respective roles. This has arisen in part because the relationship with IDEA predates Whaikaha, and Whaikaha inherited from the Ministry of Health a long history of unresolved complaints raised by the community directly with the Ministry and partly due to lack of a documented framework for interaction between provider and funder.

(viii) There has been difficulty experienced with Whaikaha's current approach to tracking or monitoring cases and complaints for which it seeks information from service providers. This has arisen in part from the transition from the Ministry of Health and in part because of inconsistencies in filing practices across different Portfolio Managers.

(ix) There has been a decrease in the number of regular meetings occurring between Whaikaha and IDEA for a number of reasons.

I recommend that:

(i) To the extent that it can, Whaikaha share its standard operating procedure for managing complaints with service providers to ensure complete understanding of processes by both funder and providers.

(ii) The provider engagement and management tool used by some Whaikaha portfolio managers is mandated for use by all portfolio managers, in consultation with the appropriate person at each service provider. Sufficient information needs to be shared at the earliest opportunity by both parties, and there needs to be effective communication channels and a well understood framework for the

parties to engage together for the purpose of resolving complaints raised directly with Whaikaha. This tool, the Contract Management Plan, should cover the issues set out in the body of this report under the heading “Contract Management Plan”.

- (iii) The above document should also be reflected in a public document that sets out not just what providers can expect in their relationship with Whaikaha, but sets out clearly what disabled people and their whānau can expect.*
- (iv) Whaikaha needs to set its framework out in writing, including how natural justice considerations will be met, reflecting the steps in the Outcome Agreement, and working in collaboration with service providers. This document would necessarily have to be drafted so that all parties meet their obligations under the HDC Code, including with respect to the right to privacy and the right to informed consent in particular cases where a complainant has requested confidentiality.*
- (v) Whaikaha to standardise its filing practices by a protocol to be used by all Portfolio Managers once the full transition from Lotus Notes to Objective has been achieved.*
- (vi) There be a commitment from both parties to regular meetings occurring both for contract management/relationship matters and matters relating to quality and service users. These regular meetings be expanded to enable a broader range of information sharing about matters specific to IDEA, as well as to broader matters within the sector. Serious concerns are to be raised within those meetings, unless there is a matter of urgency.*
- (vii) The ongoing work between the two organisations, and the broader sector, in relation to critical incident reporting, and the complaints register work already begun, continue on a collaborative basis.*
- (viii) Whaikaha to implement a documented process for service providers to be able to raise issues with regard to any of Whaikaha’s policies,*

processes and practices which affects that service provider. Because of the ongoing, every day relationships which need to be preserved, that process needs to have independence from the Chief Executive and the Portfolio Manager and officials who deal with service providers to manage their contracts.

(c) Term of Reference (b):

- (i) The Outcome Agreement currently governs the actions Whaikaha can take when a person raises issues they have about IDEA or other contracted service providers. In that regard, the Outcome Agreement sets out the framework for what can be described as an escalating response.

I recommend that:

- (i) The steps Whaikaha will take when a concern is raised and the level of reporting back it will then require from the service provider needs to be clearly articulated in the recommended Contract Management Plan and in the public expectations document.***

(d) Term of Reference (c):

- (i) While IDEA's complaints process as reflected in the documents is fit for purpose, there are improvements which can be made to strengthen it and make it more robust.
- (ii) Despite the documented process itself being fit for purpose, how it has been experienced in practice by many of the participants to my review does not fit with the documented processes, leading to the mistrust amongst the community that I have identified.
- (iii) The precise nature and extent of that complaints process, and how it operates is, however, not well understood within the disabled sector and there is a level of mistrust about what will happen when a complaint or concern is raised.

I recommend that:

- (i) Whaikaha and IDEA, as part of the Contract Management Plan I have recommended, should agree on a timeframe for making my recommended changes to the complaints process.***

- (ii) The complaints processes of other service providers be similarly reviewed by Whaikaha to ensure they comply with what I have recommended in this report.***

- (iii) IDEA's Policy to be reviewed, or a separately drafted statement or Policy should set out for disabled persons IDEA's approach to:***
 - a. engagement with Whaikaha other agencies except for HDC;***
 - b. management of complaints that do not relate to care and services provided to individual service users;***
 - c. how IDEA responds to indicators of concern which may, for whatever reason, not constitute a complaint (for example, comments made in the media or to another agency).***

- (iv) IDEA, in its scheduled review of its Complaints Policy, ensures that:***
 - a. All communications with disabled people and their family members about raising concerns makes clear that IDEA has a zero-tolerance approach to retaliation on those raising concerns and that all concerns and complaints are welcomed and will be dealt with in accordance with the Policy.***

 - b. To show a practical commitment to this zero-tolerance approach, IDEA set out clearly procedural steps it will take to demonstrate this approach to the community it serves, including such actions as considering removing a staff member who has been accused of retaliatory action while investigations are carried out.***

- c. *The Policy to make clear that all concerns can be assessed and will be dealt with under the Policy if it is assessed that they raise issues of service delivery.*
 - d. *All staff across IDEA at all levels to be reminded that it is the right of the disabled person and/ or their family members to raise concerns and complaints and all communications with those persons are to be conducted in a polite, respectful and mana enhancing manner.*
 - e. *IDEA to consider formulating some form of early intervention/de-escalation approach with processes to deal with less serious issues. This might include access to skilled facilitators either internally or externally through a specialist dispute resolution unit established internally.*
- (v) *In order to rebuild the trust of the community it represents and serves, which is perceived by many I spoke to be low or non-existent, I recommend that IDEA:*
- a. *Carry out a refreshed training programme for all its staff of its complaints policy (once it has been updated in accordance with the planned review).*
 - b. *Advise service users and their whānau through a dedicated communication means (webinar or special newsletter) of the existence and substance of the reviewed complaints policy and the staff training programme, and advise service users and their whānau that IDEA will take seriously and investigate all alleged instances of the complaints policy not being followed, or retaliatory threats being made.*
- (vi) *Whaikaha take steps to start policy work with the Government, in conjunction with IDEA, other providers, and with HDC to increase the role the advocacy service can play in the disability sphere.*
- (vii) *Whaikaha and IDEA need to work together to formulate possible options to address those circumstances which are unable to be resolved satisfactorily.*

(viii) To help in the rebuilding of trust in the disabled community, all service providers to consider developing a formal apology and redress Policy for when complaints are upheld. Such a Policy should be modelled on the following guiding principles:

- a. Wherever possible, the apology should come from the level within the service provider that the person affected requests, and in the form the person prefers (i.e. orally, within the context of a restorative meeting, or in writing).***
- b. The apology should make clear the person giving it has listened to the survivor's story, and that the affected person has been heard and believed. It should acknowledge the harm suffered and should express regret for that harm, without the person giving the apology feeling they have accepted responsibility.***
- c. The apology should acknowledge the maia, or courage, of the person in coming forward and sharing their story.***
- d. The apology should restate the service provider's commitment to making its services a safe place for all those in its care. It should set out any steps taken to rectify the harm caused to the person.***
- e. If appropriate, the apology to be consistent with tikanga Māori, or with Pacific cultural practices.***

(e) Term of Reference (d):

- (i) I do not consider at present that Whaikaha's processes and approach to responding to complaints about IDEA's delivery of services is appropriate. I say this not because there is no process – broadly speaking, that is contained in the Outcome Agreement, but because there are no clear steps and framework for how the mechanisms in the Outcome Agreement will apply.

- (ii) This is the reason I have recommended the formulation of a Contract Management Plan, and the public document, not to usurp the very clear provisions of the Outcome Agreement, but to ensure both parties, and the disabled community, have a clear understanding of their expectations, roles and obligations, and to ensure when action is taken or information is sought, it happens consistently.

I therefore refer again to my recommendations above in relation to the proposed Contract Management Plan.

Themes of what I was told

17. At the outset I note that the allegations and complaints I discuss below arise from those who elected to come forward to speak with me once my review was announced by Whaikaha. Inevitably, given the subject matter of the review, many of those who came forward had had a negative experience of IDEA. My review did not involve or seek a wider representative sample of people to speak with or seek information from. As pointed out to me by IDEA, this means the subjective negative experiences referred to in this report, while accurate from each participant's perspective, may not reflect the experience of all those who have had a relationship with IDEA to date. I further note, as I have above, that I was not required by the review to investigate or determine the matters raised with me by those who came forward to me.
18. I also acknowledge that IDEA have earlier undertaken, and provided me with a copy of, a survey undertaken with a representative sample of service users and family members (drawn randomly and interviewed by an independent consultant) and I consider such a process to be useful and necessary on a regular basis to enable IDEA to understand the current experience of the people it supports.
19. I also wish to emphasise that these allegations and complaints have *not* been fully investigated, and are outlined as what the participants believe and experienced. I have received detailed responses from IDEA which indicate that many of the allegations and complaints have been addressed.
20. Nonetheless, the common allegations and issues from participants that came forward to speak to me can be broadly summarised as:
- (a) A perceived stifling of complaints and fear of retaliation or withdrawal of services: participants in the review described fearing retaliation, both in relation to their membership of the IHC and the support provided to their family members living in IDEA Services' residences. One participant provided me with a submission she made to the Disability Commissioner in 2021 which encapsulated this concern of family members:

“Our mature members and those who remember our community whakapapa have placed a great deal of trust and responsibility in the corporate structure, the Board and the CEO. Many describe themselves as “grateful” and feel uncomfortable about other members “stirring” and being “disloyal” to IHC.”

21. Allocation and distribution of funds: concerns included overcharging residents for services, and failing to provide funded services to residents.
22. The tenor of communications with whānau and people receiving support from IDEA Services and raising concerns: participants provided communications that contained terse and threatening language in response to what appear on their face to be good faith concerns and questions from whānau.
23. Delays and failures to respond to inquiries, requests for information, and complaints: participants made multiple requests which went unanswered or which were only answered after repeated follow-up requests.
24. One participant provided emails showing she made repeated requests in April and May 2021 for an investigation into an injury her son sustained. The participant also wrote of her concern that she had received a call the previous week to inform her that another bruise had appeared on her son’s thigh in exactly the same place as the first injury and that the participant had been asked if she had any theory as to how it happened.
25. Closure of day bases and withdrawal of services: several participants were concerned about the closure of day bases and reduction in day services provided by IDEA Services following Covid-19 lockdowns which were not reinstated, with a resulting loss in social connection for the people who used those services on a daily basis.
26. One participant provided me with an article published by the New Zealand Herald and Stuff entitled “An Intellectually Disabled Woman Suffered a Nervous Breakdown Following the Closure of an Activity Centre.” That article stated that IDEA had closed 114 vocational service centres across the country before the level 4 lockdown. IDEA reportedly said that after lockdown ended, many day activities were moved into people’s homes and users were enjoying the new arrangement. The article went on to note that IDEA did not reopen 59 day bases. A woman quoted in the article said that her sister had gone from spending five days a week doing activities all day in a designated centre with skilled carers and tutors, where she socialised with friends and familiar faces, to one activity per morning and afternoon for about an hour each in her own home.
27. Covid-19 lockdowns: there was a concern that the lockdown rules imposed on people in IDEA Services’ residences were unnecessarily stringent (i.e. went beyond the guidance produced by the Ministry of Health), causing considerable stress and isolation for residents. One participant said in a submission to the HDC that she wrote to the Board and COO of IDEA regarding the exacerbation of isolation and containment within residential services due to the extension of lockdown rules. The participant said her concerns were dismissed and the Head Office subsequently said that *“everyone was happy.”*
28. Bath ban: the decision to ban baths and remove tapware from baths in all IDEA Services’ residences following a WorkSafe prosecution was criticised in part because the decision

was made without any consultation and had an extreme impact on the human rights and quality of daily living of residents. Many participants expressed concern about the bath ban and it is fair to say that this issue in particular which led to increased media scrutiny and, ultimately, this review.

29. Control, institutionalisation, and lack of independent advocacy: There was a sense expressed among some individuals who spoke with me that IDEA has lost sight of the original aim of IHC to reject institutionalisation. Specific examples and concerns about institutionalisation and control over people living in IDEA Services residences were supplied by several people.
30. Participants described having to request permission or give notice in advance to visit their family members in residences or take them on holiday which some perceived as reflecting a culture of institutionalisation and control.
31. One participant expressed concerns about the chemical restraint of her son (through the administration of a benzodiazepine to manage his behaviour), and an absence of independent advocates to ensure fair and humane treatment. This participant produced a copy of an email she sent in which she expressed concern that IDEA staff told her they would not work with her son unless he was prescribed benzodiazepines to manage anxiety.
32. Other participants raised concerns to be about food, including access, quantity and quality issues, which became quite difficult at times to resolve.
33. Other observations and individual care issues: staff overload, poor working conditions, poor property maintenance, a lack of adult stimulation and activities, distress caused by staff members' complaining about difficult family members, failure to collect a service user from a community activity, and communication difficulties with IDEA Services staff.
34. A previous service user told me that her needs were not met by IDEA, who did not help her with her mental health issues, hid food from her, prevented her from going anywhere she would enjoy, and threatened to send her to a psychiatric unit. She said that the staff took charge of her money and placed signatories on her bank account. At one stage, she was left in her room while she was having a depressive episode. She said no one asked her how she was feeling or whether she wanted any food or drink, and her medication was withheld. Now that she has left residential care, she says the staff prevent her from seeing her friends who still live in IDEA Services' residences.

Terms of Reference

35. The Terms of Reference for this Review were as follows:

Scope of review

Given the nature and number of issues, the volume of material and correspondence, and the range of perspectives, I instruct you to review the information provided by Whaikaha and IDEA, or obtained by you in the course of the Review, and to advise us on the following:

- (a) *Outline what Whaikaha's role should be in responding to concerns about complaints raised by the community about services they receive from IDEA Services (or other contracted*

service providers), and how Whaikaha's role interacts with IDEA's (or other service providers), and other agencies, who also have roles in responding to concerns and complaints raised, such as the Health and Disability Commissioner.

- (b) In what circumstances should action be taken by Whaikaha when a person raises issues they have about IDEA Services (or other contracted service providers), and what action is appropriate?
- (c) After considering the information, whether IDEA Services' complaints processes and its approach to responding to complaints about its contracted delivery of disability support services is appropriate with regard to the contractual obligations outlined in the Outcome Agreement and Service Specifications and if not, what steps Whaikaha should take to ensure that IDEA Services' complaints processes are appropriate?
- (d) After considering the information, whether Whaikaha's processes and approach to responding to complaints about IDEA Services' contracted delivery of disability support services is appropriate and if not, what steps Whaikaha should take to ensure it is appropriate.

36. The following principles guided this Review:

Oversight: this Review is focused on the policies, practices and responses and appropriate oversight of them being in place given the nature of the relationship between the disability community and the government and service providers. It is directed to ensuring appropriate systems are in place to ensure that where disabled people and their families have concerns or complaints, there is an appropriate system (both at IDEA Services and within Whaikaha) in place to consider them and take any necessary action to address the concerns.

Transparency: the Review will be conducted consistently with the relationship provisions contained in the contract between Whaikaha and IDEA, in cooperation with IDEA. Disabled people and their families will receive appropriate updates via designated people within Whaikaha, considering privacy and contractual obligations.

Independence: it is important that complaints are considered within their context, but also with an objective perspective. This Review is to be completed with objectivity, and as part of your work, please advise on any actions or steps necessary to maintain your objectivity as an external reviewer.

Adaptive approach: as this Review is not reliant on Whaikaha exercising any contractual rights, IDEA's participation and any further provision of information will be entirely at their discretion. However, if you consider it necessary to access information from IDEA that is not being provided, you may request that Whaikaha consider exercising contractual rights to gain access to this information.

Review Process

37. I have taken the following steps in the course of this Review:

- (a) I attended preliminary meetings with officials at Whaikaha to discuss the scope of the Review and the issues to be addressed.

- (b) Between March and July 2023, I met in person or by video with approximately 30 family members and carers of people who are supported by IDEA Services and, in some cases, those people themselves.
- (c) Between March and July 2023, I received and considered written material from people who are supported by IDEA Services or their whānau. This material included approximately 30 cover emails; correspondence, submissions and complaints to the Health and Disability Commissioner (HDC), Human Rights Commission (HRC), New Zealand Law Society, Manatū Hauora | the Ministry of Health, IDEA Services and IHC, and Whaikaha; written summaries and detailed explanations of specific incidents giving rise to concern on the part of service users or their whānau; media articles; information about the background and context to the current services provided by IDEA Services; minutes of meetings of IHC Associations; clinical documents and assessments of people who are supported by IDEA Services; IHC's National Services Review consultation and submissions made in the course of that consultation; and decisions of the Human Rights Review Tribunal.
- (d) In April 2023 and July 2023, I attended meetings at IHC's National Office in Wellington with IHC's [REDACTED] and the following members of the Executive Teams of IHC and IDEA Services: [REDACTED] [REDACTED] [REDACTED]. The purpose of the meetings was to discuss the Review and for IHC and IDEA to give me an overview of the organisation and their complaints management framework, and then to discuss with IDC and IDEA particular concerns that had been raised with me by participants.
- (e) Following those meetings, I received and considered a significant quantity of information that was supplied to me by IDEA, including:
- i. An information paper and supporting appendices setting out IDEA's complaints management framework and responses to the questions in the Terms of Reference about IDEA's approach;
 - ii. A response paper and detailed appendix from IDEA responding to the questions in the Terms of Reference about Whaikaha's role;
 - iii. Documentation relating to 15 sample complaints made or notified to IDEA which included correspondence with whānau of service users; excerpts from the clinical records of individuals who raised a concern or on whose behalf a complaint was made; correspondence and submissions to HDC, Manatū Hauora | Ministry of Health, and Whaikaha; employment records; and other relevant material.⁵
 - iv. A summary of response to particular allegations raised with me by participants.

9(2)(a)

⁵ IDEA advised that the 15 sample complaints were selected based on a random selection of actual complaints received by IDEA. 5/15 were randomly selected, and the remainder were selected as varied examples to highlight IDEA's approach and show various complaint management outcomes. In addition, IDEA also provided me with details on specific complaints which it was aware of as being of concern to Whaikaha.

- (f) In May 2023, I attended a virtual meeting with the [REDACTED] and the [REDACTED] to discuss the issues arising in the course of the Review and the respective experiences and perspectives of [REDACTED] in response. 9(2)(a)
- (g) In May 2023, I attended a virtual meeting with Rose Wall, Ella Cruz, and Amanda James from the HDC to discuss the HDC's perspective and insights into the matters that are the subject of this Review.
- (h) In June 2023, I attended a virtual meeting with Lorna Sullivan, Jane Bawden, and Emma Jacka from the Royal Commission of Inquiry into Abuse in Care.
- (i) In June, I attended a virtual meeting with Whaikaha officials from the team who interact with IDEA Services (Doug Funnell (General Manager, Operational Performance Team), Viv Ruth (Northern Manager), Amanda Bleckmann (Deputy Chief Executive), Jane Hansford (Interim Southern Manager, National Portfolio Manager), Christina Curd (Senior Advisor, Quality Team)).
- (j) In July 2023, I met with IDEA/IHC to discuss particular allegations raised by participants and invited them to respond.
- (k) I provided this report in draft to Whaikaha and to IDEA on 9 August 2023 and invited their response. I then provided a further draft to both organisations.
- (l) I considered the responses of Whaikaha and IDEA, made changes as appropriate and needed, and produced this final report.

38. The main part of this report is focussed on my findings and recommendations. As Appendices, I include:

- (a) Appendix A: Context and Legal Framework.
- (b) Appendix B: IDEA complaints framework analysis.
- (c) Appendix C: IDEA sample complaints provided.
- (d) Appendix D: Feedback from HDC and the Royal Commission Abuse in Care Inquiry.

(a) What should Whaikaha's role be in responding to concerns and complaints raised by the community about services they receive from IDEA Services (or other contracted service providers), and how Whaikaha's role interacts with IDEA's (or other service providers) and other agencies, who also have roles in responding to concerns and complaints raised, such as the HDC?

39. At the outset, I note that while my review was of the complaints process for IDEA, the Terms of Reference referred also to "other contracted service providers". My recommendations therefore apply equally to other contracted service providers in this sector.

40. I find that Whaikaha's role, although able to be ascertained from the contractual provisions, is currently not clearly articulated, and therefore understood, in relation to when and how it should respond to concerns and complaints raised about service delivery. This may arise in part due to Whaikaha's relatively new status within the disability sector and partly to its role as funder but not provider of services, and partly due to a lack of consistent documented processes and frameworks on Whaikaha's part, outside of the Outcome Agreement itself.
41. I note that IDEA has indicated to me a need to know more about Whaikaha's processes and frameworks. Whaikaha advised me that it has outlined its complaints processes for disability supports or services received on its website: <https://www.whaikaha.govt.nz/contact-us/complaints-feedback/>.
42. Whaikaha further advises that it has an internal standard operating procedure for managing complaints which outlines when and how Whaikaha responds to concerns and complaints raised about service delivery. Whaikaha is in the process of updating this standard operating procedure which will include updating the information provided on the Whaikaha website. Whaikaha advises that the standard operating procedure is based on the mandate Whaikaha has under its contracts with service providers to receive and investigate complaints about the quality of the disability supports delivered by contracted providers. Whaikaha also advises that their complaint management is undertaken in line with the HDC Code and the EGL principles.
43. This update is positive but a further step IDEA would like to have clarity on is where it too can raise concerns as they arise. To the extent possible, I also recommend Whaikaha share that standard operating procedure with service providers once it has been updated to ensure complete understanding of processes by both funder and providers.
44. Whaikaha's role is to ensure performance by the service provider via a range of contractual remedy mechanisms, and best practice expectations, which become increasingly formal in the case of ongoing non-performance. I expand on this below.
45. In terms of raising complaints or issues with IDEA Services or requesting information, I note that Whaikaha currently do this by:
- (a) Contacting the Chief Operating Officer – [REDACTED] **9(2)(a)**
 - (b) Contacting one of the four regional managers.
 - (c) Raising issues at the regular quality meetings discussed below.
 - (d) Contacting the Chief Executive where there is a concern that needed to be escalated, for example where the Chief Operating Officer had not responded as expected or was not able to respond or where the complaint was about the Chief Operating Officer.
46. I note that the relationships between key people working for IDEA Services/IHC and people employed by Whaikaha are longstanding with people having been in place for several years, knowing each other well, and in some cases having a work relationship in prior roles with other organisations.

47. What this has resulted in, however, is an ad hoc and inconsistent approach by Whaikaha to raising issues or requesting information.
48. I find that the existing contractual relationship between Whaikaha and IDEA governs what Whaikaha's role should be in responding to concerns and complaints and requesting information. In my view, however, the current engagement approach does not reflect a proactive and collaborative dialogue about resolving issues which would be to all parties' collective benefit. There is a level of mistrust within both organisations because of the lack of clarity around respective roles. This has arisen in part because the relationship with IDEA predates Whaikaha, and Whaikaha inherited from the Ministry of Health a long history of unresolved complaints raised by the community directly with the Ministry and, partly as I have said, due to lack of a documented framework for interaction between provider and funder. Whaikaha has advised me that some portfolio managers have a provider engagement and management plan, which outlines how they engage with the provider, including who they go to for particular matters (for example complaints, incidents, deaths, audits, payment issues, placement issues, contract issues and so on). This is a useful tool which I recommend is put in place for every portfolio manager, in consultation with the appropriate person at each service provider.
49. Sufficient information needs to be shared at the earliest opportunity by *both parties*, and there needs to be effective communication channels and a well understood framework for the parties to engage together for the purpose of resolving complaints raised directly with Whaikaha. Relying on the contractual terms is not enough. Whaikaha needs to set its framework out in writing, reflecting the steps in the Outcome Agreement, and working in collaboration with service providers. This document would necessarily have to be drafted so that all parties meet their obligations under the HDC Code, including with respect to the right to privacy and the right to informed consent in particular cases where a complainant has requested confidentiality.
50. It is clear that the primary mechanism for complaint resolution with service users lies with IDEA (and other service providers) and that such complaint resolution must take place in accordance with the service providers' contractual requirements (including Tier One specifications). My analysis of such compliance by IDEA is set out below under that question.
51. It is also clear that that contractual relationship contains the mechanisms for Whaikaha to act to monitor service performance, and to take steps to remedy any breaches.
52. However, in my view, the existing framework and practice for engagement between Whaikaha and IDEA needs significant improvement and transparency, with both parties needing to have a clear understanding on expectations and roles and obligations in this regard. I acknowledge that IDEA have been requesting clarity about the engagement processes and regular meetings and information sharing, and I perceived a willingness on both parties' parts for this to be addressed.
53. What is not presently clear and defined is, in my view:
- (a) Whaikaha's current approach to tracking or monitoring cases and complaints for which it seeks information from service providers. IDEA's experience has been that

Whaikaha has difficulty locating information relating to some complaints or quality issues because Whaikaha often requests information already provided and have themselves frequently commented on their difficulty finding information. IDEA gave as an example in recent months (and weeks), receiving several requests for information from Whaikaha officials who have openly stated they cannot locate previously provided information to them – this has included complaints, HDC responses, critical events and death reports. Whaikaha advises that everything that comes to the Quality Team is filed, logged and monitored according to Whaikaha's Standard Operating Procedure for complaints, incidents and deaths. Whaikaha is of the view that the challenges IDEA has experienced around Whaikaha requesting information already provided is due to:

- (i) The challenges of Whaikaha's transition from filing in Lotus Notes in the Ministry of Health system (and problems with access Whaikaha staff have experienced in the last 15 months) to filing in Objective in the Whaikaha system. Whaikaha expects this issue to decrease over the next few months when all Whaikaha's filing is shifted from Lotus Notes.
 - (ii) Inconsistencies in filing practices across different Portfolio Managers.
- (b) Clarity as to which Whaikaha staff have responsibility for what tasks under the Outcomes Agreement.
 - (c) the precise processes and channels between the two organisations for raising and responding to issues and at what level;
 - (d) clear expectations of which organisation responds to which issue and when notification is required to Whaikaha of complaints raised in different forums;
 - (e) the parties' expectations of how and when any such processes and channels should be used;
 - (f) the mechanisms by which resolution or otherwise of the issues raised is communicated between the organisations. There does not appear to exist a process whereby Whaikaha can confirm to complainants coming directly to it, after appropriate information gathering and monitoring/assessment by Whaikaha, its view that the service provider in question is complying with its contractual obligations. Whaikaha advises that as part of its complaints management process the complaint lead (usually the Portfolio Manager) will communicate regularly with the complainant including providing information about the issues found and actions taken, followed by a discussion to assess if the complaint has been resolved to the complainant's satisfaction. This discussion focusses on the complainant's concerns, rather than

contract breach terminology, with contract breach being assessed under a separate audit and evaluation programme.⁶

(g) A joint approach for handling media inquiries.

54. Ultimately, as set out in the contractual arrangements, Whaikaha has an oversight role, and related contract obligations to provide guidance and assistance to IDEA and other service providers. It does not have the function or expertise to work on detailed operational matters, which is the domain of the service provider and the reason for the contract.

55. Whaikaha's monitoring and oversight role encompasses the following:⁷

(a) Monitoring how the service provider is performing under the required contract specifications. As stated in the procurement guidelines:⁸

“When you procure social services, your focus is on outcomes. This means measuring things that make a difference, particularly improvement in client outcomes, as well as simply measuring the activity.”

(b) Providing clarity as to all matters relating to funding.

(c) Each Portfolio Manager creating a contract management plan which tracks the management of the contract and the relationship with the provider. The content and amount of detail in the plan can be tailored to each contract.⁹ There should be regular reviews of performance built into the plan.¹⁰

(d) Providing seminars and workshops, regular meetings and updates, fora and hui to encourage and enable good practice engagement between funder and service provider. This may involve sharing learnings from engagement with other service providers.

(e) Working together in a collaborative partnership, which involves good advice, support, and practical help in the areas of oversight (without assuming responsibility for operational decision-making) and respect for the supplier's expertise. Barriers to this occurring include lack of clarity around who to contact, slow responses, lack of respect, mistrust and unreasonable timeframes.

(f) Ensuring all feedback is positive and constructive. This can best be achieved by adopting a structured approach to managing the relationship.¹¹

⁶ <https://www.whaikaha.govt.nz/for-service-providers/audits-and-evaluation/>

⁸ Refer [Social services procurement | New Zealand Government Procurement](#) and [KiaTutahi - dia.govt.nz](#)

⁸ Ibid.

⁹ [Manage the contract | New Zealand Government Procurement](#)

¹⁰ [Conducting reviews | New Zealand Government Procurement](#)

¹¹ See [Contract and relationship management Driving results and maximising outcomes \(procurement.govt.nz\)](#)

- (g) Working with the service provider to identify and regularly update risks to service delivery, and maintaining a risk register, including as to any systems risks within the funder.

Contract Management Plan

56. Because of the lack of clarity I have found that presently exists, some breakdown in the trust between the two organisations has ensued and now needs to be rebuilt. I therefore recommend that:

- (a) A formal Contract Management Plan should be negotiated and agreed for each Portfolio. This Plan will not be legally binding as the contract governs the relationship. However, the Plan should be devised in accordance with the New Zealand Government Procurement guidelines for contract management and should include clear statements as to:

- (i) The role of the funder and the role of the service provider.
- (ii) The level at which contact is made for differing issues of concern.
- (iii) The contractual relationship principles, including the expectation that all communications both between the two organisations, and with consumers and their families, at all levels be conducted in a manner which is polite, respectful and mana enhancing.
- (iv) The manner in which issues pertaining to non-performance of the contract will be raised and at what level.
- (v) What information is required to be shared both from provider to funder, and vice versa, and when and how a register of that information will be kept and maintained.
- (vi) The contractual steps for dispute resolution.
- (vii) A regular schedule of visits and contact from the Whaikaha Portfolio Manager.
- (viii) Better specificity of the contract's reporting requirements to set out clearly:
 1. The issues that Whaikaha must respond to (namely those complaints which have not been satisfactorily resolved by the service provider).
 2. What complaints, and resolution of complaints, must be notified to Whaikaha. These notifications aim to ensure the service provider is complying with its complaint management processes, enable a 'no

surprises' relationship, prioritise the safety and wellbeing of disabled people, while keeping to the obligations under the HDC Code.

- (ix) Methodical shared tracking of the issues outstanding, including expected actions and the status of those actions.
- (x) The ability of the parties to raise and have addressed any concerns about the respective other party's processes.

Meetings

57. In relation to meetings, I note that, at present, each of the four IDEA Regions have a lead Whaikaha Portfolio Manager. Whaikaha Regional Managers and Portfolio Managers meet on a fortnightly / monthly basis to review Deaths, Critical Incidents, complaints, issues raised by the NASC, and issues raised by IDEA. This is also a opportunity for the organisations to share any developments impacting (positively and negatively) within the regions.
58. At a national level, 3-weekly meetings take place between the Whaikaha National Portfolio Manager and Senior Manager and IDEA's Chief Operating Officer and Service Design and Strategy Manager. The focus of these meetings is to discuss, review, and problem-solve national and high-profile operational concerns. In addition, the four Whaikaha Portfolio Managers, the national lead Portfolio Manager, and the Principal Advisor Quality meet with IDEA's National Quality Manager on a monthly basis to discuss a number of issues, including:
- (a) Review of complex Critical Incident Reviews;
 - (b) Review of complex Initial Death Reports;
 - (c) Update of status of any HDC Investigations;
 - (d) Review of any other incident raised through the Quality Team relating to the quality of service IDEA provides;
 - (e) Review of any Quality related concerns / complaints regarding the people IDEA support.
59. I understand that there are two types of regular meetings that should be occurring between Whaikaha and IDEA – one related to contract management/relationship matters; and the other related to quality matters and the people IDEA support. IDEA also informed me that meetings have not been occurring on a regular basis despite IDEA's request for that to happen. I therefore recommend that there be a commitment from both parties to regular meetings occurring.
60. I recommend that these regular meetings between IDEA and Whaikaha be expanded to enable a broader range of information sharing about matters specific to IDEA, as well as to broader matters within the sector. This may necessitate more frequent meetings. I also understand that there may have been some inconsistencies in these meetings happening in recent times (which may be partly due to Covid-19 issues) and I

recommend that a formal meeting schedule be agreed and implemented as soon as possible.

61. I do not consider it appropriate for serious concerns to be raised with the service provider in the absence of a regular meeting schedule. The absence of meetings between the parties to table and address issues is inconsistent with the escalating framework for action by Whaikaha envisaged by the Outcome Agreement.
62. Both organisations need to take steps to ensure that issues can be raised by the parties and that all issues raised are resolved. If they cannot be, this is the sort of situation where Whaikaha would be entitled to act under the contract to achieve resolution. Complaints can be raised at these meetings but if raised, they need to feed back into the Contract Management Plan tracking register I have recommended above.
63. Whaikaha has developed an interim critical incident reporting category for hospitalisations to make the new incident reporting system more feasible for disability service providers. This new incident reporting triage category was sent to IDEA and several other national providers to trial for 3 months so Whaikaha can consider 'how wide to throw the net' so that the reporting process is adequate to identify those incidents that indicate poor service quality without being too onerous for all parties.
64. IDEA advised me that Whaikaha sent out the proposed reporting changes to service providers without any prior engagement or consultation, and it resulted in significant confusion and misunderstanding which IDEA says could have been avoided if there had been an appropriate consultation framework in place. Whaikaha advises that it did test the draft updated critical incident form with providers, including IDEA prior to finalisation but there was a gap between testing and finalisation because this coincided with the transfer of functions from the Ministry of Health to Whaikaha. Whaikaha states it has appreciated feedback from IDEA about the form and incident categories as part of Whaikaha's commitment to continuous improvement.
65. This is ongoing work between the two organisations and I recommend this continue as an example of the type of trust building which is required. As part of this ongoing work, I recommend Whaikaha engage in full consultation with, and notification to, service providers before settling on any further proposed changes.
66. I understand that, until now, IDEA has updated Whaikaha whenever a serious complaint is received via HDC. In the absence of any further guidance around notification requirements from Whaikaha, IDEA has taken the approach that the funder only needs to be aware of 'critical event'/serious complaints and subsequent investigations involving potential breach of the Code of Rights. This means that IDEA does not notify every complaint received via this channel (such as advocacy-level referrals, or matters that are considered capable of direct resolution). As part of the Contractual Management Plan I have recommended, I recommend Whaikaha and Idea work together to agree on what complaints should be notified to Whaikaha.

67. I further understand that IDEA has developed a complaints register as a way to keep Whaikaha informed about the status of complaints and other issues. The responsibility for updating this register is the responsibility of IDEA.
68. The register has four sections:
- (a) Table 1: Historical (Pre 2022) HDC cases that remain open either under investigation or awaiting an HDC update.
 - (b) Table 2: All HDC correspondence/cases received from 1 January 2022.
 - (c) Table 3: All correspondence/cases received from external agencies (excluding HDC) from 1 January 2022.
 - (d) Table 4: All complaints referred to IDEA by Whaikaha – or raised by IDEA to Whaikaha due to their level of seriousness.
69. I understand that the complaints register work is still in progress. Again, I recommend this work continue in collaboration with Whaikaha as appropriate so that both parties have access to the same information and updates (subject to any necessary privacy and consent obligations under the HDC Code).
70. Whaikaha and the service providers need to respectively share significantly more information about their internal practices and systems, including when any changes to those practices and systems are proposed. It is clear that at present there is no established Contractual Management Plan in place, which leads to a perceived lack of consistency amongst service providers in how Whaikaha approaches matters which arise and it is experienced as being ad hoc. Again, this information can be built into the Contractual Management Plan I have recommended be implemented.
71. In addition, Whaikaha needs a documented process for service providers to be able to raise issues with regard to any of Whaikaha's policies, processes and practices which affects that service provider. Because of the ongoing, every day relationships which need to be preserved, that process needs to have independence from the Chief Executive and the Portfolio Manager and officials who deal with service providers to manage their contracts. The same principles must apply to this process as applies to any complaints process, namely a way to raise concerns, a mechanism to share information, a transparent and independent resolution process, and a documented outcome with reasons.
72. I am heartened by the fact that both organisations were keen to further proposed improvements to the current framework for managing and resolving complaints across the board and there are productive conversations underway and actions being taken by both organisations – for example the restoration of regular relationship meetings and increased formality of the quality meetings – and I urge this momentum to continue for

the benefit of all, not least of which the people at the heart of what both organisations do.

73. I also note that Whaikaha is in the process of resourcing the development of a future quality framework, including being fit for purpose for the transformed system (which includes a focus on being person-directed).
74. I understand that this and associated work to update and publish Whaikaha's internal standard operating procedures will be able to encompass:
- (a) providing public documentation about what the disability community, and providers they are engaged with, can expect from Whaikaha when a complaint is raised; and
 - (b) setting out a framework for taking the steps outlined in the Outcomes Agreement.
75. Whaikaha advise that it is likely that Whaikaha would then work with providers to seek alignment with that framework, and would respond to my recommendation to review other providers through that process.
76. I endorse this work as the programme around a future quality framework will go some way towards addressing the thrust of many of the recommendations for Whaikaha. I urge Whaikaha to work with providers in relation to this work.

(b) In what circumstances should action be taken by Whaikaha when a person raises issues that they have about IDEA Services (or other contracted service providers) and what action is appropriate?

77. I consider that the Outcome Agreement currently governs the actions Whaikaha can take when a person raises issues they have about IDEA or other contracted service providers. In that regard, the Outcome Agreement sets out the framework for what can be described as an escalating response.
78. I find that process to be:
- (e) In the first instance, it is the service provider's responsibility to ensure that appropriate avenues exist for people to raise and have resolved grievances about services, and to ensure that a person raising any such grievance does not suffer any reprisal (DSS Principles, Tier One Service Specification, clause 3.8).
 - (f) Therefore, in the first instance, Whaikaha ought to refer any such person directly to the service provider for resolution via that service provider's complaint mechanism. Whaikaha is also empowered by the Outcome Agreement to visit the service provider (via the Portfolio Manager) or contact the service provider by phone or email as required. Whaikaha may also provide constructive feedback (Clause 5.2 of Framework Terms and Conditions).

- (g) Whaikaha may initiate a “Special Enquiry” where if it, acting reasonably, believes the service provider has breached the terms of the Outcome Agreement (Clauses 5.4-5.6 of Framework Terms and Conditions).
- (h) Whaikaha can initiate a “Remedy Plan” with the service provider if it considers the service provider has breached its obligations under the Outcome Agreement, and regular communication as described in the Relationship Principles in the Framework Terms and Conditions has not resolved the issue (clause 9.4 of Appendix 9).
- (i) If Whaikaha believes the service provider has committed a breach of its obligations under the Outcome Agreement, and the breach poses a significant risk to the health and safety of people in the service provider’s care, or other significant risk of non-compliance with the Outcome Agreement Whaikaha may initiate a number of actions:¹²
 - (i) An audit;¹³ and/or
 - (ii) The appointment of an advisor for no longer than 3 months, or for a time agreed in writing, to assist the service provider to resolve any quality issues. The advisor will monitor the service provider’s performance and report back to Whaikaha and the service provider. This is paid for by Whaikaha.
 - (iii) Appoint an appropriately qualified and experienced temporary manager to take over management of the provision of services on behalf of the service provider, to remedy the breach identified. The service provider will be liable for the reasonable costs of the temporary manager.
 - (iv) Suspect some or all of the services (and suspend payment for those services) on giving written notice to the service provider until the breach is rectified.¹⁴
 - (v) Withhold some or all of the payments to the service provider until the service provider has remedied a breach or until Whaikaha is satisfied that the service provider has taken appropriate steps to ensure that a breach of that nature will not happen again.¹⁵
 - (vi) Whaikaha may remedy the breach itself and recover reasonable costs from service provider.

¹² Note that Clause 6 of Appendix 9 deals with “uncontrollable events” leading to breach.

¹³ Note that clause 9.8 of Appendix 9 provides that Whaikaha may conduct audits in accordance with the Ministry Audit process.

¹⁴ See also clause 12 of the Framework Terms and Conditions.

¹⁵ Ibid.

(vii) Whaikaha can exercise its termination rights contained in the Framework Terms and Conditions.¹⁶

- (j) Whaikaha has the power to undertake regular audits of the service provider (Appendix 4). This can include as to its complaints.
- (k) Whaikaha has the power to make reasonable directions to the service provider as to the provision of services, with such directions being required to be consistent with the terms of the Outcome Agreement (clause 5.4).

79. I therefore consider that the Outcome Agreement provides the mechanisms for Whaikaha to take when concerns are raised directly with it by a disabled person or someone from that person's family. What needs to be completely clear and understood between Whaikaha and the service provider, however, is the steps Whaikaha will take when such a concern is raised and the level of reporting back it will then require from the service provider, so that the framework for ensuring the service provider complies with its contractual obligations is clear. This needs to be clearly articulated in the recommended Contract Management Plan.

80. Further, where Whaikaha proposes to undertake its Special Enquiry rights or any remedy plan or other action in respect to an individual complaint, I consider it to be critical from a natural justice perspective that Whaikaha first provide the service provider with relevant and sufficient information in order for the service provider to investigate and respond effectively. This necessitates and underlines the need for there to be a clear Contractual Management Plan which provides transparent and explicit guidelines around notifications and information sharing.

(c) Whether IDEA Services' complaints processes and its approach to responding to complaints about its contracted delivery of disability support services is appropriate with regard to the contractual obligations and if not, what steps Whaikaha should take to ensure that IDEA Services' complaints processes are appropriate?

81. At the outset, I find that IDEA's complaints process, in terms of its documentation, is fit for purpose and any improvements I have recommended are intended to strengthen it and make it more robust. I also find that, despite the process itself being fit for purpose, how it has been experienced in practice by many of the participants to my review does not fit with the documented processes, leading to the mistrust amongst the community that I have identified. I am hopeful and optimistic that the recommendations I have made will help start to regain that lost trust.

82. For the avoidance of doubt, I do not consider that the fact there are some matters to be included in the review of the complaints process means that IDEA is in breach of the Tier

¹⁶ See also clause 9.9 of Appendix 9 of the Outcome Agreement and clause 11 of the Framework Terms and Conditions for further termination provisions.

One Service Specification although, ultimately, that is a matter for Whaikaha's assessment.

83. Whaikaha and IDEA, as part of the Contract Management Plan I have recommended, should agree on a timeframe for making my recommended changes to the complaints process.
84. I recommend that the complaints processes of other service providers be similarly reviewed by Whaikaha to ensure they comply with what I have recommended in this report.
85. The first part of the IDEAs Complaints Policy sets out the steps required to ensure the complaints process is accessible. I find that the documented process, if followed, ensures the accessibility of the complaints process. For example:
 - (a) Service users are to be given information on the complaint service at the point of entry to the service. A copy of the brochure is also given to any people acting on behalf of the service user.
 - (b) The brochure is available and accessible in all services and offices. It includes details of a free telephone number as one avenue for making a complaint.
 - (c) Communications about the complaints process are to be included in newsletters, on the website, and in other communications, as well as displayed on posters.
 - (d) IDEA provides easy-read letters of explanation and apology directly to the people they support, even where a complaint is made on that person's behalf.
86. The timeframes for acknowledging and investigating a complaint (5 and 10 working days respectively) are consistent with the requirements under the Code. In meetings with me, IDEA confirmed that those timeframes are, however, minimum standards, and that if a more urgent response was needed, that would be done.
87. I do note that the Policy, while helpful in terms of prescriptive steps to notify people of the complaints process and set out how IDEA responds to complaints, is silent on important questions arising in the context of this review including:
 - (a) engagement with Whaikaha or indeed other agencies except for HDC;
 - (b) management of complaints that do not relate to care and services provided to individual service users;
 - (c) how IDEA responds to indicators of concern which may, for whatever reason, not have been treated or interpreted as constituting a complaint (for example, comments made in the media or to another agency).
88. IDEA made the valid comment to me in feedback on my draft report that the review relates only services and service delivery and therefore it does not seem appropriate to

add broader matters or “non complaints” to the Policy. While this is true on its face, what I did note from the participants to the review, is that often concerns which on their face may not seem to relate to services and service delivery, at their heart often do, and the absence of resolution of such concerns at an early stage can lead to mistrust and escalation of matters which then do become complaints explicitly about service delivery. If the Policy is amended to be able to respond at some level to all concerns raised, even via an initial assessment for a link to service delivery, I consider this will be a worthwhile step in preventing some issues from becoming larger than they were originally.

89. I recommend that a review be undertaken as soon as possible to address the above issues. IDEA have advised me that the Policy has had two independent reviews completed in 2017 and 2019 which confirmed that it was appropriate and not needing any changes. IDEA’s plan to update the Policy in the next quarter, and will reflect that the two reviews in 2017 and 2019 have occurred.
90. My overall impression is that the issues arising in the sample complaints provided by IDEA, taken at face value with the information supplied by IDEA, have been dealt with in accordance with the above Policy. None of these specific complaints give rise to any major concerns on my part in terms of IDEA’s management of and response to the sample complaints it provided me with. Inevitably, there are some instances where matters could have been handled differently amongst the sample complaints, but there is nothing to suggest that IDEA has acted in a fundamentally flawed way with regard to any of these sample complaints. Critically, however, is the *perception* that the participants who came to me had of the complaints process overall, and their specific concerns which may or may not have resulted in specific complaints to IDEA, as well as those aspects on which the complaints policy is currently silent.
91. I also note that I did not conduct a full investigation into these matters, as that was out of scope, but merely assessed the IDEA response against the Policy.
92. In order to rebuild the trust of the community it represents and serves, which is perceived by many I spoke to be low or non-existent, I therefore recommend that IDEA:
 - (a) Carry out a refreshed training programme for all its staff of its complaints policy (once it has been updated in accordance with the planned review).
 - (b) Advise service users and their whānau through a dedicated communication means (webinar or special newsletter) of the existence and substance of the reviewed complaints policy and the staff training programme, and advise service users and their whānau that IDEA will take seriously and investigate all alleged instances of the complaints policy not being followed, or retaliatory threats being made.
93. The extensive documentation underpinning each of the sample complaints provides helpful context about the complexity of some of the matters complained about. In my view, a bigger issue which reflects concerns raised with me by participants is that they feel as if concerns may be raised “on the ground” by family members, or not raised at

all, which means an issue is not treated as a complaint under the Policy and is therefore not resolved, sometimes for many years, and sometimes leading to an irretrievable breakdown in the relationship between IDEA and a family.

94. I am confident that IDEA's Policy is intended to operate from the ground up. I consider, however, that explicit and refreshed engagement with disabled persons and their whānau needs to be undertaken, so that everyone understands that all matters intended as either concerns or complaints are captured and assessed, and that staff are trained to identify when a matter should be referred to the formal complaints process.
95. While it appears that the organisation is meeting its Code obligations to ensure that service users and their whānau are provided with information about how to make a complaint, and the Organisation appropriately accepts complaints in any form (whether verbal or written), my concern is that many family members told me they had brought matters to the attention of staff on the ground and those family members consider the issues are then not being appropriately treated and dealt with as complaints. There is also language evident in some of the responses which is unnecessarily combative and disrespectful.
96. I therefore recommend that IDEA, in its review of its Complaints Policy, ensures that:
- (a) All communications with disabled people and their family members about raising concerns makes clear that IDEA has a zero tolerance approach to retaliation on those raising concerns and that all concerns and complaints are welcomed and will be dealt with in accordance with the Policy.
 - (b) The Policy to make clear that all concerns can be assessed and will be dealt with under the Policy if it is assessed that they raise issues of service delivery.
 - (c) All staff across IDEA at all levels to be reminded that it is the right of the disabled person and/ or their family members to raise concerns and complaints and all communications with those persons are to be conducted in a polite, respectful and mana enhancing manner.
 - (d) IDEA to *consider formulating some form of* early intervention/de-escalation approach with processes to deal with less serious issues. This might include access to skilled facilitators either internally or externally through a specialist dispute resolution unit established internally.
97. It is evident that HDC's advocacy service plays an important role in facilitating the efficient resolution of complaints. I recommend that Whaikaha take steps to start policy work with the Government, in conjunction with IDEA, other providers, and with HDC to increase the role the advocacy service can play in the disability sphere.
98. Both HDC and IDEA expressed a belief that each would benefit from some joint work between the contact or relationship person at each agency. Critically, IDEA was clear

that it would welcome further engagement with the HDC on continuing the existing relationship between the organisations, particularly with mutual assistance in finding available expertise to assist in investigation processes, and also ways in which both organisations can work together to shorten what are currently often very long timeframes. In turn, HDC indicated it would appreciate greater clarity from service providers around processes for information sharing for complaints referred to it. While this is outside the scope of my review, in that it relates to IDEA and HDC and not IDEA and Whaikaha, it may nonetheless be helpful for IDEA to consider meeting with HDC, with other service providers, at a senior level to discuss issues specific to the disability sector and how both organisations can better work together to address complaints referred to HDC.

99. I note that IDEA appropriately has different processes for managing direct complaints and HDC complaints. The differences in approach – and both processes - are sound. Any complaint alleging illegal or criminal activity (including allegations of physical or sexual abuse) is reported to the Police. The organisation’s usual process is that it does not respond to complaints from people who have no direct relationship to service users, on the basis that those complaints are not covered by the Code. The organisation does not normally treat statements made to the media as a complaint either, although it will ‘sometimes’ reach out and offer support via the complaints process. I consider that there is a need for a process within IDEA to acknowledge and respond to complaints or issues that may not fall within the Code (to the extent such a process has not already been documented) and there needs to be clarity as to Whaikaha’s expectations regarding such complaints (as I have already discussed).

100. I am aware that IDEA is making changes to its complaints framework, consistent with its commitment to continuous improvement. The main change underway at present is the introduction of a new complaints database which has been trialled at the Chief Operating Officer level and will be rolled out in a staged process after user testing is completed. In addition, IDEA is working to develop and share more “case learnings” with staff, in response to feedback from a recent survey. The intention is to publish documents of this nature on a regular basis and to discuss them at team meetings. I endorse this work and recommend it be continued, and expanded to include training to staff on what ought properly to be treated and managed as a complaint. In this regard, I recommend that staff are trained to recognise that day-to-day concerns or informal requests should appropriately be assessed as complaints even if they are not expressed as such. This will be relevant to IDEA’s ability to track trends and to identify systemic issues that should be addressed in other residences.

101. IDEA also emphasised to me that some complaints simply cannot be resolved satisfactorily and I have seen evidence of this in some of the participants that have spoken to me. As I have recommended above, Whaikaha and IDEA need to work together to formulate possible options to address these types of circumstances. Leaving any issue unresolved is, in my view, in tension with Right 10(3) of the Code which requires the provider to facilitate the fair, simple, speedy and efficient resolution of

complaints. In this respect, regulation 3 of the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 is relevant, noting that a provider is not in breach of the Code if the provider has taken reasonable actions in the circumstances to give effect to the rights, and comply with the duties, in this Code. The onus is on the provider to prove that it took reasonable actions. In some circumstances, resolution may mean that both parties acknowledge that there cannot be any resolution to each party's satisfaction, and instead it is acknowledged that the parties have completed a process to attempt to resolve matters, but a satisfactory outcome could not be met. I consider that to be still reaching an outcome in terms of the Code's requirements.

102. Some families told me they had been advised of termination of services without assistance in accessing alternative services. IDEA disputes this and emphasises that its approach is always to ensure that where it advises that it needs to potentially or actually withdraw from service, this is always done on the understanding that there will need to be a transition plan and period. This is outlined in IDEA's contractual specifications. Further, IDEA is required to follow the former Ministry of Health Exit Policy for Residential Service Users in circumstances where it believes it needs to withdraw service. I understand that that Policy requires review, and I recommend Whaikaha prioritises this work as a matter of urgency, involving service providers in the review.
103. Finally, I recommend that all service providers consider developing a formal apology and redress Policy for when complaints are upheld. Such a Policy should be modelled on the following guiding principles:¹⁷
- (a) Wherever possible, the apology should come from the level within the service provider that the person affected requests, and in the form the person prefers (i.e. orally, within the context of a restorative meeting, or in writing).
 - (b) The apology should make clear the person giving it has listened to the survivor's story, and that the affected person has been heard and believed. It should acknowledge the harm suffered and should express regret for that harm, without the person giving the apology feeling they have accepted responsibility.
 - (c) The apology should acknowledge the maia, or courage, of the person in coming forward and sharing their story.
 - (d) The apology should restate the service provider's commitment to making its services a safe place for all those in its care. It should set out any steps taken to rectify the harm caused to the person.
 - (e) If appropriate, the apology to be consistent with tikanga Māori, or with Pacific cultural practices.

¹⁷ Note this may need further consideration in light of the pending recommendations of the Royal Commission Abuse in Care Inquiry.

104. For completeness, I note that the IDEA 2022 Quality Report contains information about the survey of family and whānau seeking their views on the complaints process. The survey captured responses from 358 people, representing 16 percent of the total number of people who have a family member in residential services. The survey was sent to 542 randomly selected individuals via a process determined by a Quality Team staff member. I acknowledge this survey initiative by IDEA as a positive way to take proactive steps to seek detailed engagement and feedback with service users and families, and I urge IDEA to continue to undertake this initiative on a regular basis.
105. Almost half of the respondents (approximately 168) said they had made a complaint to IDEA Services and two thirds of that number (119) said the complaint was resolved to their satisfaction. In other words, my calculations indicate that approximately one-third of the total number of respondents reported (a) making a complaint and (b) satisfactory resolution of that complaint.
106. Only 49 of the 358 respondents to the survey reported that they made a complaint and that it was not resolved to their satisfaction. In other words, 14 percent of respondents reported (a) making a complaint and (b) unsatisfactory resolution of the complaint. The independent consultant noted themes amongst those 49 of complaints being unsubstantiated or not upheld against staff, agreed changes not being substantial enough or not feeling well listened to or communicated with through the process.

(d) Whether Whaikaha’s processes and approach to responding to complaints about IDEA Services’ contracted delivery of disability support services is appropriate and if not, what steps Whaikaha should take to ensure it is appropriate?

107. I have addressed in (a) above the steps the Outcome Agreement sets out for when Whaikaha receives a complaint about a service provider directly.
108. I do not consider at present that Whaikaha’s processes and approach to responding to complaints about Idea’s delivery of services is appropriate. I say this not because there is no process – broadly speaking, that is contained in the Outcome Agreement, but because there are no clear steps and framework for how the mechanisms in the Outcome Agreement will apply.
109. This is the reason I have recommended the formulation of a Contract Management Plan, not to usurp the very clear provisions of the Outcome Agreement, but to ensure both parties have a clear understanding of their expectations, roles and obligations, and to ensure when action is taken or information is sought, it happens consistently.
110. I therefore refer again to my recommendations above in relation to the proposed Contract Management Plan.

Appendix A: Context and legal framework

IHC was founded in 1949 by a group of parents who wanted equal treatment from the education and health systems for their children with intellectual disabilities. IHC New Zealand is an incorporated society and is registered as a charity on the Charities Register. The IHC Group of Charities encompasses three wholly-owned subsidiaries with contract funding and community programmes funded by donations (IHC, IDEA Services and Accessible Properties).

Accessible Properties provides social and disability housing; IDEA Services supports adults with intellectual disabilities to live in their own homes and be part of their local communities; (together with Choices NZ, which facilitates flexible support relationships and access to community services to help people with disabilities and health-related conditions to achieve their goals). IHC advocates for the rights, inclusion and welfare of all people with intellectual disabilities and supports them to live satisfying lives in the community. IHC provides advocacy, volunteering, events, membership associations and fundraising.

It is important to emphasise that this review was focussed on the IDEA Services limb of IHC although concerns were brought to my attention by participants in relation to the other limbs as well, which are beyond the scope of my review.

IDEA Services is New Zealand's largest provider of services for people with intellectual disabilities and their families. Their stated core values are: Empowerment, Inclusion, Responsiveness and Support.¹⁸ IDEA expressly recognises that, in supporting people with intellectual disabilities, they must work in partnership with them to aid their personal development, that each person's plan is unique and that there is no one-size-fits-all approach.¹⁹ The services IDEA provides include supported living, residential living with support, activities, healthy ageing, specialist services and accessing support. IDEA is funded by the Government through Whaikaha and, to access IDEA's services, a person must undergo a comprehensive needs assessment, carried out by Needs Assessment and Service Coordination Services (NASCs) or an Enabling Good Lives connector, depending on the person's region.

As a disability services provider that receives funding from the Government, IDEA operates within a complex framework of legal obligations that reflect its commitments to the people it supports and their whānau, its staff, other health and disability service providers, its funders, and the general public.

Enabling Good Lives

In 2011, members of the disability community developed the Enabling Good Lives approach with the intent of increasing choice and control for disabled people and their families.²⁰ The Enabling Good Lives approach is a foundation and framework to guide positive change for disabled people, families, communities and governance structures. The Enabling Good Lives approach has eight core principles, a vision and key components to guide positive change. The vision and eight principles are based on respect towards disabled people and their families culminating in trusting disabled people and their families to be decision-makers in their own lives and to govern the resources used for their support. The Enabling Good Lives approach holds that disabled people and families can bring about positive

¹⁸ See <https://www.IDEA.org.nz/about>

¹⁹ Ibid.

²⁰ See <https://www.enablinggoodlives.co.nz/about-egl/>.

change when they have control over resources (e.g. personal budgets with options of how these are managed), access to an independent ally, access to resources to build regional and national leadership and investment in disabled people, families and their communities.

The Enabling Good Lives principles govern the partnership between the disability sector and government agencies with a view to achieving long-term transformation of how disabled people and whānau are supported to live everyday lives. The Enabling Good Lives Principles are encapsulated in clause 9.13 of Appendix 9 of the current Outcome Agreement between IDEA and Whaikaha.

The principles to guide change in the interests of Enabling Good Lives are:

- (a) Self-determination: Disabled people are in control of their lives.
- (b) Beginning early: Invest early in families and whānau to support them, to be aspirational for their disabled child, to build community and natural supports, and to support disabled children to become independent, rather than waiting for a crisis before support is available.
- (c) Person-centred: Disabled people have supports that are tailored to their individual needs and goals and that take a whole life approach rather than being split across programmes.
- (d) Ordinary life outcomes: Disabled people are supported to live an everyday life in everyday places; and are regarded as citizens with opportunities for learning, employment, having a home and family, and social participation—like others at similar stages of life.
- (e) Mainstream first: Disabled people are supported to access mainstream services before specialist disability services.
- (f) Mana enhancing: The abilities and contributions of disabled people and their families are recognised and respected.
- (g) Easy to use: Disabled people have supports that are simple to use and flexible.
- (h) Relationship building: Supports build and strengthen relationships between disabled people, their whānau and community.

Outcome Agreement and Service Specifications

IDEA's current contractual arrangements with Whaikaha are contained in an Outcome Agreement and Service Specifications. The last Outcome Agreement, comprising 13 variations, expired on 30 November 2022. After a period of negotiation, the current Outcome Agreement was signed in May 2023, effective 1 December 2022, and expires on 30 November 2025.

The Outcome Agreement describes the outcomes to be achieved, the services IDEA will provide to contribute towards achieving that outcome, and the performance measure framework to assess the provision of the Services and whether the Services have contributed towards achieving the Outcomes.²¹

²¹ Clause 2.2.

IDEA is required by the Outcome Agreement to provide the services listed in Appendix 5 in accordance with the relevant Service Specifications in Appendix 1.²² In the provision of the services, IDEA must meet or exceed any performance measures set out in Appendix 1 and Appendix 10. The performance measures are used to determine whether IDEA has been successful in delivering the service in accordance with the Outcome Agreement.²³

In providing the services, IDEA is required to follow the reasonable directions of Whaikaha (such directions being required to be consistent with the terms of the Outcome Agreement).²⁴

- (a) Appendix 1 requires that the services will be delivered according to the Tier One Service Specifications.²⁵ The Tier One Service Specifications incorporate a number of the other legal obligations and parameters relevant to IDEA's provision of services:
- (b) Clause 3 reflects Whaikaha's commitment to the United Nations Convention on the Rights of Persons with Disabilities, the objectives of the New Zealand Disability Strategy, and the Code of Health and Disability Services Consumers' Rights:²⁶
 - i. **People are individuals who have the inherent right to respect for their human worth and dignity.** The individual needs and goals of the person receiving services are met and the rights of the Person to privacy and confidentiality are respected.
 - ii. **People have the right to live in and be part of their community.** Services have as their focus the achievement of positive outcomes for People, such as increased independence, self-determination, and integration into their community. Services contribute to ensuring that the conditions of the everyday life of People are the same as, or as close as possible to norms and patterns, which are valued in the general community (normalisation). Participation in the local community is maximised through physical and social integration and an innovative, flexible approach to meet changing needs and challenges is adopted.
 - iii. **People have the right to realise their individual capacities for physical, social, emotional and intellectual development.** Services promote recognition of the competence of People, and enhance the image of people with a disability. A Person-led approach permeates all services with individualised services appropriately responding to the particular life skills, needs and goals of individual Persons.
 - iv. **People have the same rights as other members of society to services which support their attaining a reasonable quality of life.** Services form part of a coordinated service system with other services available to the general community. There is extensive cooperation and integration with Providers of other support services for people with a disability.

²² Clause 5.1.

²³ Clause 5.2.

²⁴ Clause 5.4.

²⁵ Available at <http://www.health.govt.nz/our-work/disability-services/contracting-disability-support-services/contracts-and-service-specifications>

²⁶ Note there are also overlaps with, and reflections of, the Enabling Good Lives principles.

- v. **People have the right to make choices affecting their lives and to have access to information and services in a manner appropriate to their ability and culture.** The Person's involvement in decision-making regarding individualised services received is evident. Service provision ensures that no single organisation providing services exercises control over all or most aspects of the life of the Person, unless the Person chooses otherwise. Providers demonstrate that as an organisation they are accountable to people using their service.
 - vi. **People have the same rights as other members of society to participate in decisions which affect their lives.** Providers ensure that People are involved (or have advocacy support where necessary to participate) in decision-making about the services which they receive. People are provided with and encouraged to make use of avenues for participation in the planning and operation of services which they receive. Opportunities are provided for consultation with People in relation to the development of the organisation's policy.
 - vii. **People have the same rights as other members of society to receive services in a manner which results in the least restriction of their rights and opportunities.** Opportunities are provided for People to reach goals and enjoy lifestyles which are valued by the individual.
- (c) Clause 6 addresses cultural acceptability, requiring (in clause 6.1) that the Provider will deliver services in a culturally appropriate and competent manner, ensuring the integrity of each Person's culture is acknowledged and respected. The provider will take account of the particular needs within the community served in order that there are no barriers to access or communication, and that services provided are effective. Clause 6.2 specifically addresses services to Māori, requiring providers whose service users may include Māori to demonstrate in their Quality Plan how the policies and practices of their organisation and service delivery shall benefit Māori. This requirement reflects the objective of the New Zealand Disability Strategy and the priorities of the Disability Support Services Māori Disability Strategy – Whāia Te Ao Mārama. Clause 6.3 requires the provider to deliver services to Pasifika and their aiga in accordance with the priorities set out in Faiva Ora – the Disability Support Services' Pacific Disability Plan.
 - (d) Clause 7 requires the development, implementation and evaluation of a transparent system for managing and improving the quality of services, mitigating risks and ensuring quality management and governance to achieve the best outcomes for People.
 - (e) Clause 7.7 provides specifically for risk management and clause 9 addresses safety obligations imposed by New Zealand Health and Disability Sector Standards and health and safety at work legislation.
 - (f) Clause 8.4 requires the provider to comply with all aspects of the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 and the United Nations Convention on the Rights of Persons with Disabilities.

The Tier One Service Specifications in relation to complaints management relevantly provide:

- (a) The principle recorded in clause 3.8 that people have the right to pursue any grievance in relation to services without fear of the services being discontinued or any form of recrimination. Providers are required to ensure that appropriate avenues exist for people to raise and have resolved grievances about services, and to ensure that a person raising any such grievance does not suffer any reprisal.
- (b) The requirement in clause 8.5 that the provider enables people, families, whānau and other people to make complaints through a process for the identification and management of complaints. This process will meet the requirement of the Health and Disability Commissioner's Code of Rights, and will ensure that:
 - i. The complaints procedure itself is made known to and is easily understandable by People/families/whānau and staff.
 - ii. All parties have the right to be heard.
 - iii. The person handling the complaint is impartial and acts fairly.
 - iv. Complaints are handled at the level appropriate to the complexity or gravity of the complaint.
 - v. Corrective actions to address the complaint are undertaken in a timely manner and the complainant is kept informed about these actions, and positively engaged in the process as much as possible.
 - vi. It sets out the various complaints bodies to whom complaints may be made, and the process for doing so. People/families/whānau will further be advised of their right to direct their complaint to the Health and Disability Commissioner and to the Ministry of Health, particularly in the event of non-resolution of a complaint.
 - vii. Complaints are handled sensitively with due consideration of cultural or other values.
 - viii. Māori and their whānau will have access to a Māori advocate if desired, to support them during the complaints process.
 - ix. People who complain, or on whose behalf families/whānau complain, shall continue to receive Services which meet all contractual requirements.
 - x. Complaints are regularly monitored by the management of the Service and trends identified in order to improve service delivery.
 - xi. Records are maintained of all complaints, including the outcomes and improvements that arise.

Appendix 2 of the Outcome Agreement deals with monitoring. Whaikaha's Portfolio Manager may visit IDEA a minimum of once per year to discuss and monitor performance, which will include progress in achieving results for people as outlined in the performance measures, and opportunities for parties to further improve results for people. Whaikaha's Portfolio Manager is required to respond to reports received from IDEA as required and Whaikaha's Portfolio Manager may contact IDEA by phone or email from time-to-time as required.

In clause 2.1 of Appendix 2, both parties acknowledge the ongoing nature of the Outcome Agreement and the need for, and commitment to, continuous improvement in service delivery and health and disability outcomes within available funding. Both the parties agree that this includes from time to time participating in service review, and/or audit, to address areas of poor health status and/or inadequate service delivery.

Appendix 3 sets out the reporting requirements on IDEA, including Critical Incident reporting.²⁷

Appendix 4 provides for regular audits of IDEA.

The Outcome Agreement is accompanied by Framework Terms and Conditions (3rd ed.) which form part of the Outcome Agreement (Framework Terms and Conditions).²⁸ Relevantly, the Framework Terms and Conditions require that:

- Whaikaha and IDEA will maintain regular contact with each other for the purpose of monitoring IDEA's performance against its obligations under the Outcome Agreement; encouraging the on-going review and assessment of the effectiveness of the services; providing mutual constructive feedback that will enhance the effectiveness of the services; and identifying early any issues and opportunities to do things better on the part of each party.²⁹
- Whaikaha is given "Special Enquiry Rights" where, if it acting reasonably believes IDEA has breached the terms of the Outcome Agreement, it may acting reasonably require IDEA to provide information to Whaikaha to establish whether a breach has occurred and if so why it occurred, and/or to submit to an audit or Accreditation Review to establish whether a breach is an isolated event or one of multiple breaches.³⁰
- Disputes relating to the Outcome agreement are dealt with by a dispute resolution framework.³¹

Appendix 9 to the Outcome Agreement provides additional terms to the Framework Terms and Conditions, including (relevantly):

- The processes for renewal.³²
- A "remedy plan" if Whaikaha believes IDEA has breached its obligations under the Outcome Agreement and regular communication described in the Relationship Principles in the Framework Terms and Conditions has not resolved the issue.³³ If Whaikaha believes IDEA has committed a breach of its obligations under the Outcome Agreement, and the breach poses a significant risk to the health and safety of people in IDEA's care, or other significant risk of non-compliance with the Outcome Agreement Whaikaha may initiate a number of actions.³⁴

²⁷ Clause 3.3 of Appendix 3.

²⁸ Clause 3.

²⁹ Clause 5.2 of Framework Terms and Conditions.

³⁰ Clause 5.4 of Framework Terms and Conditions. Audits and Accreditation Reviews are contained in clauses 5.5 and 5.6 of the Framework.

³¹ Clause 7 of the Framework Terms and Conditions.

³² Clause 9.3 of Appendix 9.

³³ Clause 9.4 of Appendix 9.

³⁴ Note that Clause 6 of Appendix 9 deals with "uncontrollable events" leading to breach.

- An audit;³⁵ and/or
- The appointment of an advisor for no longer than 3 months, or for a time agreed in writing, to assist IDEA to resolve any quality issues. The advisor will monitor IDEA's performance and report back to Whaikaha and IDEA. This is paid for by Whaikaha.
- Appoint an appropriately qualified and experienced temporary manager to take over management of the provision of services on behalf of IDEA, to remedy the breach identified. IDEA will be liable for the reasonable costs of the temporary manager.
- Suspend some or all of the services (and suspend payment for those services) on giving written notice to IDEA until the breach is rectified.³⁶
- Withhold some or all of the payments to IDEA until IDEA has remedied a breach or until Whaikaha is satisfied that IDEA has taken appropriate steps to ensure that a breach of that nature will not happen again.³⁷
- Whaikaha may remedy the breach itself and recover reasonable costs from IDEA.
- Whaikaha can exercise its termination rights contained in the Framework Terms and Conditions.³⁸

Code of Health and Disability Services Consumers' Rights

The Code establishes the rights of health and disability services consumers and the duties of providers of those services. Right 10 of the Code sets out the right to complain:

- (1) *Every consumer has the right to complain about a provider in any form appropriate to the consumer.*
- (2) *Every consumer may make a complaint to—*
 - a. *The individual or individuals who provided the services complained of; and*
 - b. *The person authorised to receive complaints about that provider; and*
 - c. *Any other appropriate person, including,—*
 - i. *An independent advocate provided under the Health and Disability Commissioner Act 1994; and*
 - ii. *The Health and Disability Commissioner.*
- (3) *Every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints.*
- (4) *Every provider must inform a consumer about progress on the consumer's complaint at intervals of not more than 1 month.*
- (5) *Every provider must comply with all the other relevant rights in this Code when dealing with complaints.*
- (6) *Every provider, unless an employee of a provider, must have a complaints procedure that ensures that—*

³⁵ Note that clause 9.8 of Appendix 9 provides that Whaikaha may conduct audits in accordance with the Ministry Audit process.

³⁶ See also clause 12 of the Framework Terms and Conditions.

³⁷ Ibid.

³⁸ See also clause 9.9 of Appendix 9 of the Outcome Agreement and clause 11 of the Framework Terms and Conditions for further termination provisions.

- a. *The complaint is acknowledged in writing within 5 working days of receipt, unless it has been resolved to the satisfaction of the consumer within that period; and*
 - b. *The consumer is informed of any relevant internal and external complaints procedures, including the availability of—*
 - i. *Independent advocates provided under the Health and Disability Commissioner Act 1994; and*
 - ii. *The Health and Disability Commissioner; and*
 - c. *The consumer’s complaint and the actions of the provider regarding that complaint are documented; and*
 - d. *The consumer receives all information held by the provider that is or may be relevant to the complaint.*
- (7) *Within 10 working days of giving written acknowledgement of a complaint, the provider must,—*
- a. *Decide whether the provider—*
 - i. *Accepts that the complaint is justified; or*
 - ii. *Does not accept that the complaint is justified; or*
 - b. *If it decides that more time is needed to investigate the complaint,—*
 - i. *Determine how much additional time is needed; and*
 - ii. *If that additional time is more than 20 working days, inform the consumer of that determination and of the reasons for it.*
- (8) *As soon as practicable after a provider decides whether or not it accepts that a complaint is justified, the provider must inform the consumer of—*
- a. *The reasons for the decision; and*
 - b. *Any actions the provider proposes to take; and*
 - c. *Any appeal procedure the provider has in place.*

Regulation 3(1) of the Health and Disability Commissioner (Code of Health and Disability Services Consumers’ Rights) Regulations 1996 states that a provider is not in breach of the Code if the provider has taken reasonable actions in the circumstances to give effect to the rights, and comply with the duties, in the Code.

Under regulation 3(3), “the circumstances” mean all the relevant circumstances including the consumer’s clinical circumstances and the provider’s resource constraints.

Regulation 5 provides that nothing in the Code requires a provider to act in breach of any duty or obligation imposed by any enactment nor does it prevent a provider from doing an act authorised by any enactment.

Under regulation 6, an existing right is not overridden or restricted simply because the right is not included in the Code or is only included in part. These provisions are relevant to the concern identified by IDEA with respect to the situations where it faces competing legal obligations that might support or require IDEA to adopt different approaches depending on which obligations take preference.

Te Tiriti o Waitangi

The Outcome Agreement and Service Specifications, described above, include provisions which may be interpreted as reflecting the Crown’s obligations as a Te Tiriti signatory. I note for the sake of

context that the Waitangi Tribunal is conducting a Kaupapa inquiry into Health Services and Outcomes which currently includes over 200 claims. This inquiry began in December 2017 and during the second stage of the inquiry, two reports on Māori with Disabilities were commissioned. Filed in June 2019, the two reports (one by Dr Paula Thérèse King and the second by Hector Kaiwai and Dr Tanya Allport) provide valuable historical and contemporary information about the lived experiences of Māori with Disabilities.

The report by Hector Kaiwai and Dr Allport in turn referred to a 1995 report to the National Advisory Committee on Core Health and Disability Support Services which noted that many Māori were made to feel alienated and uncomfortable by their engagement with disability services. Cultural barriers, such as inadequate use of Te Reo Māori, lack of encouragement of whānau involvement, and lack of integration between social services were regarded as so significant in preventing Māori from accessing disability services that Māori with disabilities would only use them in times of extreme need. The report highlighted the need for culturally appropriate mainstream services alongside Māori specific disability services that operate within a Māori cultural context.³⁹

³⁹ Hector Kaiwai and Dr Tanya Allport, *Māori with Disabilities (Part Two): A Report Commissioned by the Waitangi Tribunal for the Health Services and Outcomes Inquiry (Wai 2575)* at 35, citing M.M. Ratima, M.H. Durie, G.R. Allen, P.S. Morrison, A. Gillies, and J.A. Waldon, *He anga whakamana: a framework for the delivery of disability support services for Māori* (1995).

APPENDIX B: IHC and IDEA Services Complaints Framework

IHC and IDEA provided several tranches of documentation which included:

- A sample of 15 complaints made either to or about IHC and/or IDEA;
- An information paper and appendices explaining IDEA's complaints management framework;
- IDEA's Quality Report for 2022;
- A response paper and appendix that responds to the questions in the Terms of Reference relating to Whaikaha's processes; and
- A response paper to some of the specific allegations raised by participants not already covered by the 15 sample complaints.

IDEA's Complaints Management Framework

IDEA provided me with an informative introductory paper which describes its management of complaints and relevant background information. This document, together with the Service Users Complaints Policy (the Policy), emphasises its objective of focusing on the people they support, particularly where the person has the capacity to understand and be involved when the complaint relates to them.

The first part of the Policy sets out the steps required to ensure the complaints process is accessible. The documented process, if followed, would ensure the accessibility of the complaints process. For example:

Service users are to be given information on the complaint service at the point of entry to the service. A copy of the brochure is also given to any people acting on behalf of the service user.

The brochure is available and accessible in all services and officers. It includes details of a free telephone number as one avenue for making a complaint.

Communications about the complaints process are to be included in newsletters, on the website, and in other communications, as well as displayed on posters.

IDEA provides easy-read letters of explanation and apology directly to the people they support, even where a complaint is made on that person's behalf.

The second part of the Policy details the steps for responding to complaints from service users or those acting on their behalf. The timeframes for acknowledging and investigating a complaint (five and 10 working days respectively) are consistent with the requirements under the Code. In meetings with me, IDEA confirmed that those timeframes are, however, *minimum standards*, and that if a more urgent response was needed, that would be done.

Notably, the sample letter of acknowledgement to a complainant addresses the concern about retaliation with the following text:

IDEA Services Ltd supports you to raise your concerns or complaints. We want you to feel safe when doing this. Please contact me immediately if you feel threatened, are told off or bullied because you have raised this concern or complaint.

The third part of the Policy sets out prescriptive steps for management of complaints made to the HDC.

Drafted in 2015, the Policy was scheduled for review every three years. The document review status at the end of the Policy indicates that there has been no review since February 2016. IDEA have subsequently advised me that the Policy has had two independent reviews completed in 2017 and 2019 which confirmed that it was appropriate and not needing any changes. IDEA plan to update the Policy in the next quarter, and will reflect that the two reviews in 2017 and 2019 have occurred.

The introductory paper provided by IDEA also sets out important context about the complaints framework, noting that:

- In 2022, IDEA received and managed 78 direct complaints, a reduction from the 165 complaints in 2021. That reduction is attributed to an increase in the number of complaints in the year prior, likely attributable to Covid-19 lockdowns, vaccination mandates, and the traffic light alert guidance for visitors.
- In the five-year period to March 2023, IDEA has received 28 complaints via HDC. The majority of these have been closed: three complaints are under open investigation and 13 were referred and resolved via HDC's advocacy process.
- It is evident from an Appendix summarising the complaints made to HDC provided to me that HDC's advocacy service plays an important role in facilitating efficient resolution of complaints. Some complaints to HDC have been referred directly to IDEA for resolution which may contribute to a prompter resolution. In comparison, the open complaints currently under investigation with HDC show that delays can arise from HDC's process which is also reflective of the involvement of other agencies in those particular complaints. For example:
- In July 2020, a matter was opened with the HDC following referral from the Coroner in relation to the death of a service user in residential services "*for consideration of the policy and procedures that IDEA Services had in place*". An investigation commenced in August 2021. The complaint is now closed and the final opinion published on 17 July 2023. IDEA was found to be in breach of the Code, but it was not referred to the Director of Proceedings. A complaint was never received by IDEA in regards to this particular case.
- In [REDACTED], a complaint was made to the HDC [REDACTED] [REDACTED]. An investigation commenced in [REDACTED] and the complaint remains open.
- In [REDACTED], a complaint alleging [REDACTED]. An investigation commenced in [REDACTED] and the complaint remains open.
- The introductory paper explains IDEA's different processes for managing direct complaints and HDC complaints. Any complaint alleging illegal or criminal activity (including allegations of physical or sexual abuse) is reported to the Police. IDEA's usual process is that while it responds to all complaints, it is limited in how it can respond to individuals who are not entitled or authorised to receive personal and health information related to the service user in question.
- In terms of statements made to the media, the extent to which IDEA provides information depends on the circumstances. What typically happens is that media interest will arise in relation to a complaint received or serious incident that has occurred. In those circumstances, IDEA is similarly limited to what information it can disclose publicly at that time. Where the

9(2)(ba)
(i)

media is referring to new information that IDEA is not yet aware of, IDEA will treat it as a complaint once it receives that further information and if it relates to a person receiving services.

The introductory paper also describes IDEA's intended changes to its complaints framework, consistent with its commitment to continuous improvement. The main change underway at present is the introduction of a new complaints database which has been trialled at the Chief Operating Officer level and will be rolled out in a staged process after user testing is completed. In addition, IDEA is working to develop and share more "case learnings" with staff, in response to feedback from a recent survey. The intention is to publish documents of this nature on a regular basis and to discuss them at team meetings.

APPENDIX C – IDEA SAMPLE COMPLAINTS

The issues raised in the sample complaints overlap to a certain extent with the issues raised by participants with me and I have grouped them broadly as follows:

- Covid-19 restrictions;
- Complaints to HDC;
- Complaints relating to individual staff members;
- The bath policy;
- Allocation of funding; and
- Third party complaints.

Covid-19 Restrictions

Two complaints focused on Covid-19 restrictions while a further two related to the closure of day bases which was connected to IDEA’s management of Covid-19.

[REDACTED]

9(2)
(ba)(i)

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Two complaints related to the closure of day bases or day services which appear to be connected with Covid-19 – either because of lockdowns or staff shortages. In March 2022, Nelson MP Rachel Boyack wrote to IDEA on behalf of her Nelson constituents who were concerned they could not access day bases. Ms Boyack’s letter also noted a concern that parents were unwilling to give their names because of a fear of retaliation.

9(2)(a) [REDACTED] responded to Ms Boyack by letter of 16 March 2022, explaining that a meeting had been arranged with [REDACTED] for 25 March 2022. The letter stated that Covid-19 was the reason for closure of day bases, and home-based and other activities were being offered as an alternative. [REDACTED] expressed concern about the fear of retaliation and asked that any specific details of retaliation be provided so that the issue could be addressed.

9(2)(a)

[REDACTED]

9(2)
(ba)(i)

[REDACTED]

Complaints to HDC

Several complaints have been lodged with the HDC, some of which it is noted were not notified to IHC or IDEA first. The HDC recommends that complainants first talk or write to the person or organisation

concerned because “*this can help you resolve your concerns more quickly.*”⁴⁰ This advice is consistent with IDEA’s complaints brochure.⁴¹

[REDACTED]

9(2)(ba)
(i)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁰ Health and Disability Commissioner, *Complaint Process*, available at <https://www.hdc.org.nz/making-a-complaint/complaint-process/>.

⁴¹ IDEA Services, *The Complaint Process*, available at https://assets.website-files.com/5dfadf2d3d01bf73a791f31b/639a58da36475834177203b2_220607-IHCGroup-Complaints%20Brochure-No%20Crops.pdf.

9(2)(ba)
(i)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Group Submission to the HDC

IDEA provided me with a significant volume of material about a submission made to the HDC by Mr G which was said to have been made on behalf of a group described as “*people who are dissatisfied with the very poor quality of life IHC now provides their children.*” A number of the people named in the group had also spoken to me separately about their individual concerns.

The submission, which is 29 pages long, raises a number of criticisms and concerns about systemic, organisational, and policy matters relating to IHC and IDEA. These concerns included:

- The closure of workshops in 2010, the closure of day activity centres and day bases in 2020 and then the subsequent decision to close some centres permanently, the latter of which was said to have occurred without consultation. The submission contends that the workshops and activity centres were closed “*because they were losing money.*”
- Allegations that the quality of services provided by IHC began to reduce when [REDACTED] [REDACTED]. The submission asserts that [REDACTED] [REDACTED] “*downgraded IHC Branches to Associations and took away their statutory powers such as voting rights.*”
- The change in nature of IHC from a charity to being more akin to a limited liability company.

9(2)(a)

- The corporate structure of the IHC Group, including the view that there was “no logical reason why IDEA and Accessible Properties should not be one organisation” because “care of those with intellectual disabilities requires a very different set of skills and experience to those needed for property management.”
- IHC and IDEA’s implementation of new rules to reflect the shift to the Covid-19 Traffic Light Framework in 2021. The parameters of the Government’s rules are listed but there is no reference to the disability-specific guidance later issued by DSS. The criticism is of a last-minute change in the implementation of the new rules with the result that families had been expecting to bring their children home on 4 December 2021 but they were informed on 3 December 2021 that this would not be permitted. The submission contends that “IHC had known (or ought to have known) the details of the traffic light system for weeks, so they had ample time to sort out their regulations for those living in IHC houses and inform those affected by them. Leaving it until the last minute after many of us had made plans to bring loved ones home was utter incompetence and heartlessness.” The new bath policy.
- The review of the Member Council and the role of the associations, which was described as “confusing” and there was criticism asserting that neither associations nor individual members had “any say at all regarding the review.”
- The amount of compensation paid to senior staff and directors. The submission contends that it is inappropriate to use other companies as a benchmark for remuneration decisions. Related to this was a concern that people who donate to IHC may be unaware of how their donations are used.

The submission asked that a number of steps be taken to address these concerns. The steps requested were:

- Asking Whaikaha to ensure those with intellectual disabilities have “the dominant say” in the care they receive. It is suggested that for this to occur, IHC in its existing form must be dismantled and replaced with a new Board, new Chief Executive, and some new senior staff who have first-hand knowledge and experience of intellectual disability. The submission also states that associations must be restored to branches with their former voting rights.
- All day centres be reopened immediately and the “disastrous 2020 IHC decision” to close day centres be investigated.
- Imposition of a “hands-on monitoring system with direct instructions to check that the service being provided is in accordance with what is expected.” The submission says that neither the Ministries of Health nor Social Development have exercised any effective monitoring.
- The appointment of a “truly independent commissioner” to achieve the above steps.

HDC provided Mr G’s submission to IHC on 10 June 2022. That letter indicated that the HDC was referring the matter directly to ██████████, noting that the HDC had met with IHC’s Director of Advocacy ██████████ to discuss the concerns relating to organisation structure, decision-making, and the services offered by the organisation. Because ██████████ had explained that many of those matters were questions of resourcing, it was appropriate for ██████████ to contact Mr G directly.

9(2)(a)

On 30 June 2022, ██████████ responded to HDC, explaining that Mr G was a “long-running critic of IHC” and that there was a significant volume of correspondence about the same matters now raised in this complaint. The letter stated that IHC had continued to engage with Mr G to seek to resolve his concerns, but he had “continued his crusade” against IHC nevertheless ██████████ said that IHC would

9(2)(a)

respond to Mr G regarding this latest complaint, but it would not be engaging further with him because the matters he was raising had been repeatedly addressed with him over the prior two years. [REDACTED] 9(2)(a)
[REDACTED] also signalled that he would be asking Mr G to cease and desist from making any further publicly defamatory comments such as those included in his complaint.

On 6 October 2022, [REDACTED] sent Mr G a cease-and-desist letter. That letter noted that IHC had responded to Mr G on numerous occasions and he had been provided with multiple opportunities to air his grievances including in a meeting with [REDACTED]. It described Mr G's "unabated campaign" against [REDACTED] in various communications to IHC members, the IHC Board, and various government agencies and ministers. It also noted that IHC had received over 30 widely circulated communications of a similar nature from Mr G in the prior three years. 9(2)(a)

On 9 November 2022, HDC wrote to [REDACTED] expressing disappointment at the indication in his 30 June letter that he had not yet responded to Mr G's concerns. The letter stated that the HDC's decision to take no further action was based on the expectation that IHC would use its best endeavours to engage with and resolve Mr G's concerns. The letter referred to Right 10 of the Code (right to complain) and emphasised that it was imperative for providers to engage with complainants and seek to resolve their complaints. The letter then stated that if HDC was not satisfied that IHC had engaged effectively with Mr G, it would "elect to take further action, including bringing the complaint to the attention of other agencies such as Whaikaha." 9(2)(a)

[REDACTED] responded the same day, attaching the 6 October letter to Mr G. [REDACTED] response explained that the delay in responding was because IHC had been awaiting information from Whaikaha and the Ministry of Health pursuant to a request under the Official Information Act. [REDACTED] 9(2)(a)
[REDACTED] also repeated that the relationship with Mr G was historical and complex and in recent years he had unfortunately "elevated his malicious campaign of disinformation against IHC / IDEA Services and various other people." It explained that [REDACTED] met Mr G and his family in Auckland in "a genuine attempt to resolve his profusion of misguided issues" but no resolution was achievable. The letter noted also that Mr G's correspondence demonstrated confusion and a lack of understanding about IHC's Constitution and decision-making procedures where decisions are fundamentally vested with the members of the Society. It further explained that Mr G had raised his concerns again at an IHC forum in Auckland and noted that Mr G's views as expressed there were shared by only "a small minority of people, some of whom are not IHC members, nor do they receive services from us."

9(2)(a) [REDACTED] responded in detail to the main issues raised in Mr G's complaint. His letter explained:

- (i) **Closure of day centres:** The Ministry of Social Development funds the vocational services on a contributory basis. There is no contract or policy that requires day services to be provided at specific properties. The day base or activity centre is not the service itself; it is only the property where services are delivered. The organisation had to make changes in recent years to improve financial sustainability. Changes were therefore made to the use of properties in delivering services. The changes were implemented following extensive consultation and engagement with service users and their families. In relation to the New Zealand Herald article supplied by Mr G which described his daughter's having a nervous breakdown due to the closure of the centres, [REDACTED] explained that Mr G's daughter had been referred for dual diagnosis specialist assistance which confirmed that appropriate support was being provided. In July 2022, the Area Manager provided an update on her wellbeing and ongoing 9(2)(a)

support due to Mr G's concerns at the time. The Manager confirmed that Mr G's daughter was doing well and there were no particular concerns about her wellbeing.

- (m) **Organisational structure:** the letter stated that IHC is entitled to structure itself in whatever way it determines under its Constitution. IHC members are able to raise matters at the AGM which Mr G has done. Communications were sent to service users and their families in October 2020 regarding the National Services review. The major change organisationally from that review was to shift to a 'one team' mode of supporting people rather than organising teams by service staff. This way, staff support would reflect individuals' goals, needs and aspirations. As a result of changes to the service delivery model, people no longer had to go to a day base as a matter of course; people could go directly to community activities; there was an increased focus on the use of community and mainstream spaces.
- (n) **Representation and involvement in IHC decision-making:** IHC members approve the philosophy, policy and strategic direction of the organisation at its AGM. Service users have a say in line with service specifications and particularly with respect to their personal support plan.
- (o) **Covid-19 alert level response:** IHC could not comment because the complaint did not contain any specific examples of individual service users being affected.
- (p) **Bath ban:** this decision reflected IHC's entitlement to make operational decisions. The background to the bath policy was explained and again, the complaint did not include any specific details of individuals' being affected by the change. [REDACTED] **9(2)(a)**
[REDACTED] The new policy is exceptions based, not a ban. Of the 2,200 people in IDEA's residential properties, fewer than 10% previously used a bath with any frequency. The policy – which was to be reviewed in February 2023 to reflect health and safety advice – allows for individual cases to be reviewed as needed.
- (q) **IHC membership process:** membership issues were discussed at members' forums.
- (r) **Remuneration of senior staff and directors:** these amounts are based on independent benchmarks and IHC is entitled to establish its remuneration policies.
- (s) **Concern about donors' being unaware of how their funds are allocated:** IHC was unable to comment because there was no evidence to substantiate this claim which in any event falls outside the Code.
- (t) **Consultation:** the National Services Review included two phases of extensive consultation in 2020. During the first phase, forums were held nationally and attended by more than 800 people. Face to face forums with service users were attended by more than 580 people, and 1,344 service users provided feedback online, in writing, or by email. 4,300 family members were invited to participate and 405 responded. Of the 34 associations invited to participate, 18 responded. In the second phase, 510 family and whānau members participated in an externally facilitated forum run by a specialist disability consultant, and 972 service users participated in a service forum. Draft reports tailored for each of these groups were circulated.

[REDACTED]

Bath Policy

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

Allocation of Funds

[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text]

Third Party Complaint

[Redacted text block]

[Redacted text]

[Redacted text block]

Appendix D: Other consultation

HDC

I also met with representatives from HDC, including the Deputy Commissioner, to gain further insight into HDC's role in the complaints framework (under the Health and Disability Act 1993, and possible breaches of the Code of Health and Disability Rights).

The individuals who I spoke to at the HDC described the HDC's approach of early interrogation, on receipt of a complaint, to determine whether it falls within the HDC's jurisdiction. The question of jurisdiction is addressed at the triage stage and the internal legal team advises on 'grey areas' and whether there is a clear delineation in terms of whether a complaint would more appropriately be considered by another agency. HDC is cautious not to interpret complaints too literally. For example, if a complaint raises concerns about funding, it may be the case that HDC cannot strictly deal with that particular issue but peripheral matters such as the adequacy of communications about funding are within HDC's remit. I was informed that the question is not always simply one of jurisdiction but whether HDC is the most appropriate agency to consider a complaint. Matters can be referred to HDC's advocacy service, Whaikaha, etc, regardless of whether the complaint is within HDC's jurisdiction.

HDC is receiving increasingly more complaints and the office is uneasy about matters 'sitting' with HDC if there is a matter that needs to be addressed urgently (for example a safety concern). HDC makes proactive referrals if there are issues that another party can address. Where a matter is relevant to Whaikaha, HDC typically will share concerns at the outset and keep the complaint open. The HDC is in the process of 'taking stock' of its Memoranda of Understanding with various agencies and they acknowledge that there is benefit in some joint work between the contact or relationship person at each agency.

The HDC emphasised the valuable role of their nationwide advocacy services, noting that their advocates are well-placed to assist people with disabilities and to approach providers where appropriate. Advocates can assist not only with resolving complaints, but they can also take proactive steps through targeted engagement with consumers and their families and whānau. HDC is looking at feedback and surveys to identify opportunities to engage with groups and understand their experiences in greater detail and the advocacy service offers significant potential in this respect.

HDC also recognises that there is scope to expand cultural support for families and whānau in reflection of HDC's equity and Te Tiriti commitments. HDC appointed a Kaitohu Matamua Māori | Director Māori approximately 18 months ago and that person has played an important role at HDC. The advocacy service has a number of Māori advocates who support HDC's objective of promoting restorative processes.

HDC was clear that complaints made to them are looked at clearly through the lens of the impact on the consumer. Where, for example, there are employment or health and safety matters, these are assessed with respect to how they affect consumers. Concerns from whistle-blowers are assessed in terms of whether pertain to an employment matter or identify an issue that is relevant to a consumer's care. In relation to the example of IDEA's changes to its bathing policy, the HDC referred me to comments issued at the time that that policy was announced which indicated their concern about the extent to which the new policy was implemented without consulting consumers first.

I asked HDC about their general view of their interactions with IDEA when complaints are received, and in particular the issues that arise when service users or their whānau raise concerns that appear to be based on limited information (because of the necessary restraints on whānau members necessarily being lawfully able to access all information, for instance in a group residential home with a number of service users). The HDC emphasised the growing recognition that providers have an important role to play in resolving complaints early. HDC's sense is that IDEA families can *perceive* a somewhat adversarial approach when they complain, which can cause consternation to families in terms of the prospect of achieving resolution. HDC's perspective is that there is sometimes misalignment between the concern raised and the nature of the response families receive.

One issue HDC has encountered is that all responses from IDEA come through a single person at IHC and HDC would like to seek IDEA taking a more collegial approach to complaints resolution that is similar to that taken by hospitals, where a team of people are involved in responding to HDC rather than a single individual who, in HDC's view, may act as a gatekeeper. In turn, IDEA have confirmed that its response process for HDC and Coroner cases (and in fact any other external agency reviews) includes all relevant staff, including specialist support from the National Quality Team and Legal Counsel, with close oversight from the Chief Operating Officer. This team works together to collate the proposed response and supporting information, before it is then reviewed and approved by the Chief Executive Officer. The CEO is responsible for sending and receiving all related correspondence for consistency purposes, but also to ensure that the responses indicate that it has been managed at the highest level and prioritised with due importance. IDEA advised that this practice was implemented after the HDC and Coroner had been sending complaints and requests out to multiple regional offices and these had not received appropriate central oversight or input, or in some cases had been overlooked due to the busy support office environments which was not considered efficient or safely addressing the related risks arising. Again, while it is not the focus of this review, this exchange of views highlights the need for further engagement between HDC and service providers generally which, in turn, will help in the provision of information to, and the raising of issues with, Whaikaha.

HDC does not accept the contention that some complaints are simply incapable of resolution in circumstances where the complainant is perceived to have adopted an intractable position. HDC is of the view that it is incumbent upon providers to keep asking what to do next and to keep trying to resolve the complaint, whether that is through a restorative process, mediation, or another approach. I have addressed this in the body of my report.

In their meetings with me, IDEA made clear that it is aware that the HDC is encouraging more involvement of their advocacy service in resolving complaints and IDEA indicated it is supportive of this approach.

IDEA notes that, as per the data provided as part of this review, from the 28 HDC complaints over the last 5 years (to March 2023), 13 have been resolved via advocacy or direct engagement.

Critically, IDEA was clear that it would welcome further engagement with the HDC on continuing the existing relationship between our organisations, particularly with mutual assistance in finding available expertise to assist in investigation processes (because of IDEA's experience in some recent cases that the HDC expert has not necessarily been an expert in the particular circumstances, and also ways in which both organisations can work together to shorten what are currently often very long timeframes).

Royal Commission of Inquiry into Abuse in Care

Finally, I am acutely aware of the work of the Royal Commission Abuse in Care Inquiry and the depth of knowledge, information and lived experiences gathered by that inquiry in the disability space, including through public hearings. I met with representatives of the disability team of that Commission who emphasised how interested they are in the outcome of this review and the findings and recommendations I make. I urge Whaikaha and service providers to collaborate and agree to share aspects of this report with the Royal Commission and, when the Royal Commission issues its final report in March 2024, to consider carefully the recommendations made with respect to disability services with a view to implementing any changes recommended as soon as possible, including by variation to the Outcome Agreement if necessary.