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Suggestions for Disability Providers when Developing their Complaints Process

13/09/2024

Preamble

The development of this document has been prompted by the work the Ministry of Disabled People - Whaikaha is doing in response to the Schmidt-McCleave Report. In particular it is aimed at addressing the general recommendation that Whaikaha consult more openly with providers and the specific recommendation 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” (p.9 16(d)ii).

Since the publication of the Schmidt-McCleave Report there have been the HDC Report on Complaints to the HDC About Residential Disability Support Services and the Royal Commission Report on Abuse in Care. Both also recommend, among other things, improved complaints systems.

John Taylor and Garth Bennie were engaged by the Ministry of Disabled People - Whaikaha to work with disability providers, disabled people, and their families to progress the recommendations of the Schmidt-McCleave report. As part of this work they developed these suggestions for disability providers on complaint management.

This document presents information to support disability support providers to ensure their complaint management processes are fit for purpose.

Introduction

Disability support providers in Aotearoa New Zealand operate within a challenging environment. They are expected to prioritise the voices of the people they support, meet funder expectations and operate within budget. In this context it is important for organisations to seek comment¹, consult with people and manage complaints to ensure the ongoing quality of disability supports.

This document is for disability support providers to build and strengthen their comments and complaints policies and processes and connects these to their continuous improvement system. Improvement is achieved by seeking comment

¹ This document uses “comment” to denote informal or implicit complaints as opposed to “feedback” that is a comment that does not expect or require a response.



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proactively and using that information to improve the support offered to the people they support. The development of a strong complaints system needs to be underpinned by a continuous improvement culture and structure. The complaints process self-review table that sits alongside these suggestions may support providers to improve their complaints processes.

The New Zealand Ombudsman has written about what makes up an effective complaints process:

Step 1: Enabling complaints

The complaints process is client focused, visible, accessible, and valued and supported by management.

Step 2: Responding to complaints

Complaints are responded to promptly and handled objectively, fairly and in confidence. Remedies are provided where appropriate.

Step 3: Accountability and learning

There are clear accountabilities for complaint handling and complaints are used to stimulate agency improvements.

(NZ Ombudsman: 2012)

The Deputy Health and Disability Commissioner notes that:

"The right to complain is a fundamental aspect of the [HDC] Code. Done well, complaints resolution plays a central role in the safety of consumers, maintenance of trust in the health and disability system, and the restoration of relationships and mana, and ensures consumer input into quality improvement. A complaints management process must first and foremost be people centred. It must focus on the resolution needs of the complainant and place the needs of people above the needs of the system. Creating a culture that welcomes complaints and where complainants are treated with respect and provided with a constructive outcome is an important aspect of quality service provision."

(Report on complaints to HDC about Residential Disability Support Services:
July 2024)

Disability support provider complaint management should be aligned with:

- The HDC Code of Rights [Code of Health and Disability Services Consumers' Rights – Health & Disability Commissioner \(hdc.org.nz\)](https://www.hdc.org.nz/consumers-rights)
- The Ministry's Quality and Safeguarding Framework [Quality and Safeguarding | Whaikaha - Ministry of Disabled People](https://www.whaikaha.govt.nz/quality-and-safeguarding) and the Ministry's Complaints Operational Guidance [Whaikaha-complaints-operational-guidance-2.docx \(live.com\)](https://www.whaikaha.govt.nz/whaikaha-complaints-operational-guidance-2.docx).



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Definition of a complaint

A complaint is when a person tells the provider that they are unhappy or have concerns about their disability support so that things can improve. Complaints should not be treated as a negative communication but as an important part of learning and improvement. This definition of a complaint is suggested for the purposes of disability support:

Any expression of dissatisfaction, request for something different, or notification of a support mismatch, whether it is formal or informal, implied or explicit, and where a response is sought, is fair and reasonable to expect, or is legally required.

(Adapted from the "Better Practice Complaint Handling Guide: The Commonwealth Ombudsman")

By keeping a broad definition of a complaint, service providers' complaint systems will be focused on capturing valuable information about the quality of what they offer disabled people, tāngata whaikaha Māori and family and whānau rather than just identifying issues, resolving them, and reporting to the funder.

It is hoped that this definition can lead to a culture of seeking comment about support and the resolution of what are often simple misunderstandings or differing viewpoints, to ensure the best support fit for the people supported.

Organisations need to look beyond "this is our policy" or "our contract requires that we..." responses to considering each person's support in the context of the UNCRPD, Enabling Good Lives and Te Tiriti o Waitangi.

The disability support environment

Disability support can be a 24/7, year on year activity and inevitably involves multi-layered relationships. Therefore, there is significant potential for misunderstanding / conflict / misalignment / dissatisfaction to occur. This is different to most other environments or undertakings, so the complaints process needs to reflect this.

There is an inherent imbalance of power between disabled people / families / whānau and providers / funders of services. The nature of organisations (whether funder or provider) means that they have positions of authority and power, and this inevitably raises the probability that disabled people and families and whānau are likely to experience a sense of powerlessness in the context of raising concerns and complaints.

Relationships are key. We should be aspiring to partnerships based on reciprocal relationships, trust, transparency in the processes and prioritisation of the



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interests of disabled people and families and whānau. This is best expressed by proactively asking: “how’s it going?” rather than waiting to be told.

For Māori, Pacific peoples and many others, the concept of “complaints” is itself a barrier to talking about individual / whānau experiences of care and service improvement. Therefore, each provider needs to have a process that is strong on intentional, early and regular conversations about quality and the experience of receiving support.

For Māori, concepts like Mana, Turangawaewae, Manaakitanga and Whaikorero need to be embedded and woven into approaches where discussions take place about experience, concerns and quality.

For Pacific peoples, Talanoa is a central concept that needs to be reflected in any process.

Key principles for a complaint system for disability support providers

The following principles-based approach is suggested as necessary to inform a useful, fair and effective complaint process and should be reflected in the service provider’s complaints policy and procedures. This is especially useful for providers who do not have a current system and/or their system needs to be updated to fit within these principles.

These principles are informed by the HDC Code of Health and Disability Services Consumer Rights, Te Tiriti o Waitangi, The United Nations Convention on the Rights of Persons with Disabilities and the Enabling Good Lives Principles and Vision.

The following principles should be reflected in all service provider’s complaints policy and procedures:

1. The starting point should always be that any comment about experience is welcome, dissatisfaction is reasonable for that person and needs to be listened to, and that a modification of support is a reasonable expectation to resolve the issue.
2. People have a right to having support designed to suit their specific needs and aspirations, and to enable them to participate as fully in society as they choose to.
3. People in receipt of support have a right to comment on how well that support works for them. For providers, this voice should form the basis of their quality planning and their internal mechanisms need to be able to



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demonstrate this level of commitment to self-determination to be fit for purpose.

4. Complaint systems should be:
 - a. Proactive. Providers actively seek comment from people as to how well their support is working for them, and they are accountable for this.
 - b. Accessible and visible. All service users, their family and whānau and the public should be able to understand and access a complaints process. This means it should be:
 - i. Available in different languages and Easy Read
 - ii. Publicly available on websites and places where people are supported and material is easy to locate
 - iii. Provided to people at regular intervals, not just once.
5. Support should be available for people to make a complaint. The person making the comment / complaint must be adequately supported and informed to present their view and comment on the service provider's response.
6. The complaint system should be co-designed with the people who will use it: the people supported and their family and whānau. This design process will:
 - a. value engagement: engagement is built on trust, authenticity, reciprocity, transparency, and a willingness to share and learn from each other.
 - b. shared leadership: knowledge and expertise drawn from lived experience is valued equally alongside clinical and other knowledge; and consumers, whānau and communities are recognised as experts by experience.
7. The complaint system must treat all parties fairly according to the principles of Natural Justice:
 - a. freedom from bias by the person making the decision / judgement.
 - b. transparency and fairness of the process.
 - c. all parties are given the opportunity to respond.
8. Complainants must be protected from any real or implied retaliatory threats or behaviour, they must not have their support curtailed or compromised, nor adversely affected in any other way. The complaint system must ensure this is publicly known and demonstrated through



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their policy statements. This includes ensuring ways for people to safely escalate their concern if they experience retaliation.

9. When a person provides any form of critique of their support, be it feedback, a request for change, a notification of a support mismatch or a complaint, they should be treated with:
 - a. Respect: acknowledging both their right to complain / provide feedback and that they are the experts of their life. All communications relating to the complaint / feedback will be polite, respectful and mana-enhancing.
 - b. Fairness: that the complaint / feedback will be treated objectively, and the person will not be blamed for what they want.
 - c. Honesty: the service provider will always act with integrity and will openly apologise for any shortcomings or mistakes that led to the complaint.
 - d. Responsiveness: the resolution process should be clear and handled in a timely manner, and the person kept informed of progress.
 - e. Cultural congruence: the person will be able to interact with the complaints / feedback system in a way that is consistent with their cultural norms and expectations.
 - f. Confidentiality: the person should be able to be as private about the details of their complaint as they wish to be. This includes not being identified should they choose not to be (with notified exceptions based on immediate safety considerations and/or illegal proceedings).
10. Organisations should have a system to store complaints securely and be able to aggregate themes as well as communicate lessons learned.
11. When a complaint is upheld, an apology and/or other form of redress or restorative practice must be built into the system that:
 - a. Comes from the appropriate level within the organisation.
 - b. Is done in a culturally appropriate manner consistent with Tikanga or other cultural practices.
 - c. Acknowledges the complainant's right to complain, their maia / courage in coming forward, and thanks them for their complaint.
 - d. Assures the person that their issue will be rectified and the timeframe for this with any other associated variables.



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- e. Guarantees that the person and anyone associated with them will be protected from any harm or disadvantage because of making the complaint.