**Operational Guidance: Management of Complaints about Whaikaha funded Disability Supports**

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## Purpose of this document

1. This operational guidance is to be used by Whaikaha – Ministry of Disabled People (Whaikaha) staff for the management of complaints about Whaikaha funded disability supports.

## Summary

1. This guidance provides a structured approach to the management of complaints about Whaikaha funded disability supports. It defines ‘complaints’ as any concerns raised by a disabled person, their family or whānau, or anyone else in relation to the delivery of disability supports.
2. The guidance sets out good complaint management practice. It describes the process Whaikaha aims to take when receiving, processing, assessing, and resolving complaints, and lists the responsibilities of Whaikaha, support providers and other organisations in responding to complaints.
3. Whaikaha can utilise our responsibility as commissioner of supports and powers through contracts with disability providers to ensure disability providers manage complaints well.
4. The aim of this guidance is to set expectations for Whaikaha to improve our complaint management practice. We want all complaints received by Whaikaha to be responded to quickly, fairly and effectively, and that our complaints management process supports service and system improvements.
5. All complaints should be welcomed by Whaikaha and providers and viewed as an opportunity to help improve the supports provided to disabled people. Whaikaha acknowledges there are gaps in the systems and policies to safeguard people and check the quality of supports. We aim to learn, improve and develop ways to address those gaps.
6. Relationships are key. We know that good complaint management should build and restore relationships between the disabled person and their support provider. Restorative practices aim to restore the mana and tapu of people after experiencing harm and to restore broken trust and relationships. Whaikaha will develop a mana manaaki approach to building trusted relationships when managing complaints.
7. We recommend this guidance is read with the overarching Whaikaha quality and safeguarding framework document called ‘How Whaikaha checks the quality of disability supports and safeguarding of disabled people’.

## What is a complaint about disability supports?

1. In this guidance, a complaint is when someone notifies us that they are unhappy or has concerns about something to do with a Whaikaha funded disability support. The complainant may have raised the issue with the support provider directly and remain unsatisfied with the outcome, or it may be about something where the complainant may not feel comfortable going directly to the provider.
2. This guidance does not prescribe how every type of complaint should be handled. There is no ‘one size fits all’ approach, and each complaint will have a unique set of circumstances that will be considered by Whaikaha staff on a case-by-case basis.
3. All complaints will be assessed by Whaikaha staff and treated as appropriate, based on the levels of severity and risk of the issues raised. The person raising the issue does not need to say or write the word ‘complaint’ for it to be treated seriously. If a person raises a concern, provides feedback, or a suggestion, we will assess the issue based on its level of severity and risk and take appropriate action.

## Who can make a complaint to Whaikaha about disability supports?

1. Whaikaha can receive complaints about Whaikaha funded disability supports from:
	1. disabled people and tāngata whaikaha Māori themselves
	2. family and whānau
	3. disability support provider staff
	4. other health professionals
	5. disability community members and advocates
	6. the Health and Disability Commissioner (HDC) if the issue is a potential breach of [the Code of Health and Disability Services Consumers’ Rights](https://msdgovtnz.sharepoint.com/sites/whaikaha-ORG-Quality-Performance/Shared%20Documents/SOPs%20Policies%20Procedures/Drafts%20%26%20Correspondence/2023.2024%20Update%20of%20SOPs%20project%20documents/1.%09Whaikaha%20can%20also%20receive%20complaints%20from%20the%20Health%20and%20Disability%20Commissioner%20if%20the%20issue%20is%20a%20potential%20breach%20of%20the%20Code%20of%20Health%20and%20Disability%20Services%20Consumers%E2%80%99%20Rights.)
	7. other government agencies and organisations
	8. any other person.

## Enabling complaints

1. Whaikaha aims to ensure that making a complaint is as easy, safe, and accessible as possible. Complaints can be made with the support of family, whānau, other support people, or someone from the Health and Disability Advocacy Service if the person raising the issues asks for their help.[[1]](#footnote-2)
2. Complaints can be received via our website, by letter or email, by phone, text, video call, or in person. If a language or cultural interpreter is required Whaikaha staff will work with the person to arrange a suitable interpreter.
3. For information on how to make a complaint to Whaikaha, where to send complaints, and what people can complain about, talk the person through the information on the Whaikaha website. Or if they are able to access the website themselves, forward the following link: [Disability services complaints and feedback | Whaikaha - Ministry of Disabled People](https://www.whaikaha.govt.nz/contact-us/complaints-feedback/).
4. Whaikaha takes all complaints seriously. Helping to resolve issues raised about the disability supports we fund is an important part of improving the delivery of quality disability supports.
5. The people managing complaints need to be skilled and have a positive attitude in complaint management and in communicating respectfully with those making a complaint.

## What is out of scope?

1. This guidance only applies to complaints about Whaikaha funded disability supports. It does not apply to complaints about:
2. Whaikaha as an organisation, our staff, or processes. Refer the complainant to: [Disability Services complaints and feedback | Whaikaha – Ministry of Disabled People](https://www.whaikaha.govt.nz/contact-us/complaints-feedback/), or forward the complaint to: complaints@whaikaha.govt.nz
3. supports or services funded by other government agencies or organisations, their staff, or processes. Refer the complainant to the relevant agency, or organisation
4. employment or human resource issues raised by staff working for providers of Whaikaha funded disability supports. Advise the complainant to contact the provider directly
5. eligibility for Whaikaha funded disability supports. Refer the complainant to: ODCE\_CDD@whaikaha.govt.nz
6. supports directly purchased by disabled people and tāngata whaikaha Māori from providers not funded by Whaikaha. Talk with the complainant about contacting their Needs Assessment Service Centre (NASC), their Enabling Good Lives (EGL) Connector, or their Individualised Funding (IF) host in the first instance. If the situation suggests a risk of, or is an allegation of violence, abuse, or neglect, ask the person if they give consent for their situation to be passed to the Safeguarding team at Whaikaha. Then email details to: Safeguarding@whaikaha.govt.nz.

## What is the complaints process about Whaikaha funded disability supports aiming to achieve?

1. As a funder of disability supports Whaikaha has a responsibility to check that support providers are delivering quality supports and are managing complaints well.
2. Anyone can make a complaint to Whaikaha about the quality of disability supports. Our complaints process may be particularly useful for people who:
	1. have made a complaint to the provider and are not satisfied with how the provider has managed their complaint
	2. do not feel safe making the complaint directly to the provider
	3. have a serious complaint that they think Whaikaha should know about (for example, a staff member is alleged to be harming a disabled person).
3. These guidelines aim to ensure that Whaikaha management of complaints:
	1. complies 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/your-rights/about-the-code/code-of-health-and-disability-services-consumers-rights/) and the Ombudsman’s guidance on effective complaint handling: [Effective complaint handling | Ombudsman New Zealand](https://www.ombudsman.parliament.nz/resources/effective-complaint-handling)
	2. applies a disabled person-centred approach, is accessible, and upholds the rights of disabled people, tāngata whaikaha Māori, and their families and whānau
	3. is in line with the expected behaviours of Whaikaha staff when managing quality and safeguarding (as outlined in Appendix 1 of the document: ‘How Whaikaha checks the quality of disability supports and safeguarding of disabled people (Quality and safeguarding framework’))
	4. is responsive and fair, risk-based and justifiable, accountable and transparent
	5. protects and supports complainants and Whaikaha staff in potentially difficult and complex situations
	6. is timely, with the goal of resolving the complaint within 20 working days, or for more complex complaints that require more time (e.g., formal investigation), provides an update to the complainant at least every 20 working days
	7. gathers, assesses and monitors information about complaints in a consistent way
	8. resolves complaints to the satisfaction of the complainant where possible
	9. is followed up by identification and implementation of service improvements that are most meaningful to the people Whaikaha supports.

## Mana manaaki

1. We aim to act in line with Te Tiriti o Waitangi using a mana manaaki approach so that quality processes are carried out according to the tikanga of mutual respect and trust. We aim to develop a mana manaaki approach for the management of all complaints, including for complaints from disabled people, tāngata whaikaha Māori, family and whānau.
2. Mana manaaki builds trusted relationships by following these steps:
	1. *Mihimihi*: Initial greeting and engagement in the way and place chosen the person making the complaint. Creating a state of noa where people can speak freely without fear of retribution.
	2. *Whakawhānaungatanga*: Making a connection and building relationships. Connecting at a personal level, drawing on our understanding of Te Ao Māori and the beliefs, values and experiences of the people.
	3. *Kaupapa*: Attending to the purpose of the encounter, identifying the preferences and priorities for the disabled person, tāngata whaikaha Māori, family and whānau for the quality of their disability supports.
	4. *Poroaki Whakamutunga*: Closing the encounter. The goal is to leave people in a place of empowerment where they can feel confident to continue their journey.

## Complaint management roles and responsibilities

1. The disability community, disability providers, Whaikaha and other organisations across Government each have a role in improving the quality of disability supports and safeguarding of disabled people. For more details see the document: ‘How Whaikaha checks the quality of disability supports and safeguarding of disabled people (Quality and safeguarding framework’).
2. The disability community (**disabled people, tāngata whaikaha Māori and their families and whānau**) bring their knowledge, experiences, and expectations of quality supports, and should talk with the provider about things that are working well and things that could improve.
3. People should make their complaint to their **disability support provider** first if they feel comfortable to do so. Organisations that provide disability support are responsible for good complaint management in line with this document. They should ensure:
	1. the people who use their services are advised of their right to complain to the provider, to Whaikaha, or to the Health and Disability Commissioner (HDC)
	2. they provide a number of accessible ways that disabled people can provide them with feedback or make a complaint. This includes having ways to support the disabled person to make a complaint. Examples include supported decision-making support, face to face relationship building options (such as a mana manaaki approach or hohou te rongo restorative practices), independent advocacy, accessible information, or feedback groups
	3. they provide information requested by Whaikaha in relation to a complaint.
4. **Whaikaha** checks that we are funding services to deliver quality and safe supports, as described in the relevant contracts, legislation, regulation and policies. For complaints made to Whaikaha this means that we will check that the provider is appropriately managing the complaint and will work towards a resolution for the complainant. In some cases, this may involve commissioning an investigation by an external evaluator.
5. **NASCs and EGL sites** will support complaint management by providing relevant information to Whaikaha and reviewing supports for the disabled person, if quality or safeguarding concerns indicate a need for change.
6. **Other government agencies** have a role, for example, the HDC for complaints relating to the Code of Rights. For more information see Appendix 2 in the document: ‘How Whaikaha checks the quality of disability supports and safeguarding of disabled people (Quality and safeguarding framework’).

## Responding to complaints: Whaikaha complaints management process

### Logging the complaint

1. When Whaikaha receives a complaint about Whaikaha funded disability supports, it first goes to the Quality and Performance team (quality@whaikaha.govt.nz) for logging. The Quality and Performance team will also assign a complaint lead, provide support, track updates on progress, and close off the complaint once resolved.
2. The assigned complaint lead will be the person that the complainant deals with at Whaikaha. Each complaint will be dealt with differently depending on the severity and risk of the issues raised. The steps taken by the complaint lead are outlined below.

### Initial contact with the complainant

1. The complaint lead will talk with the complainant and create a safe space for the person to speak freely and safely (in line with the mana manaaki approach).
2. Whaikaha will assume, unless it is proven otherwise, that every person has the capacity to understand and communicate their will and preference in matters relating to their supports.
3. The complaint lead will put in place any support they and/or the disabled person at the centre of the issue if they are a different person, may need during management of the complaint, including:
	1. how to communicate with them (e.g., email, phone, video call, face-to-face)
	2. if any support is needed (e.g. family or whānau support, advocacy support, interpreter for language, or cultural support).
4. The complaint lead will talk with the person (and their support person) raising the complaint:
	1. about the details of their complaint
	2. if they are the disabled person involved, and if not, whether we can talk with that person as well
	3. what outcome is being sought
	4. to seek consent about what information Whaikaha can share, and with who, to help resolve the complaint
	5. if the issue has been raised through the provider complaint process first, and if not, the reasons why. One reason could be that the complainant or the disabled person wishes to keep the complaint confidential.[[2]](#footnote-3)

### Confidential complaints

1. If confidentiality is requested, Whaikaha will ask how private the person wants the complaint to be and why, and we will try to honour that request as much as possible.
2. Depending on the level of confidentiality requested, the complaint lead will discuss with the complainant that our ability to investigate and respond to the situation may be limited. For example, if we cannot seek a response from the provider into the issues raised in the complaint, the provider’s ability to resolve the situation will be limited.
3. Whaikaha staff will look at how other complaints about similar situations have been managed by the provider to see if the issues can be resolved without compromising confidentiality.
4. The exception to Whaikaha agreeing to keep a complaint confidential will be if we consider someone is in immediate danger of being harmed, at risk of being harmed, or the situation involves someone breaking the law, or there is a risk to public health.

### Assessing the complaint

1. Whaikaha will assess complaints as soon as possible and within five working days so that appropriate and timely action can be taken. This may include looking at related provider complaints or quality concerns, critical incidents, performance reports, and results of evaluation and audit reports.
2. The complaint lead will identify the level of risk (minimal, minor, moderate, major, or severe). The risk is how likely it is that something bad might happen, how bad it could be, and what is already being done to prevent it.
3. When assessing the risk, the complaint lead considers the potential consequence / outcome of the situation.Complaints can be complex and may have more than one consequence. Therefore, it is necessary to explore all sources to collect the relevant information.
4. For complex or high-risk complaints, the complaint lead may choose to hold an internal support meeting to fully assess the complaint and work out what actions to take. This is called a decision support team meeting (DST).
5. Rating the risk level will help decide what response is needed (e.g. meeting with the provider, or an investigation), who needs to be told about the complaint, and who needs to be involved to resolve the complaint. The risk level of a complaint can change based on further investigations by Whaikaha or the support provider.
6. Appendix One gives examples of consequences of complaints. Some examples can fit into more than one type.

### Take action based on level of risk

1. The action chosen to manage and resolve a complaint depends on the issue (risk to people, staff or services), the level of risk, the outcome sought by the complainant, what information the complainant has consented to share, and any other information held by Whaikaha about the provider’s performance.
2. Some actions for the different levels of risk of a complaint could include:

|  |  |
| --- | --- |
| **Risk level**  | **Possible Whaikaha actions**  |
| **Low / medium**  | * Ask the provider to provide information and investigate the issue and take action to resolve the complaint. Any formal or informal review into the complaint should resolve factual issues and consider options for complaint resolution.
* Work with the complainant and provider to get an outcome.
* Whaikaha staff visits the provider, discuss issues and agrees the outcome.
* Commission a routine quality developmental evaluation
* Ask the NASC or EGL site for further information or to visit the service to gather further information.
* Refer to independent advocacy, People for Us or Assisting Change.

**Note:** for complaints about disability supports contracted by the disabled person through personal budgets or Individualised Funding, Whaikaha is not able to use contract levers to take these actions. Whaikaha could take a more relational approach with the complainant and the provider so that all parties agree to investigate and seek resolution.  |
| **High** | * As per low/medium risk actions.
* Intensive monitoring and performance management by Whaikaha.
* Invoke remedy actions as per the contract.
* Commission an investigation of the provider into issues raised and determination of whether provider is in breach of contract.
 |
| **Very High** | * As per high-risk actions.
* Commission an urgent investigation into issues raised and determination of whether provider is in breach of contract.
* Escalate the situation to Whaikaha senior leadership.
 |

1. Factors that could trigger an investigation include:
	1. allegations of abuse or neglect
	2. serious concerns or recurrent service-based issues about the immediate health, safety and wellbeing of disabled people
	3. a serious harm HDC complaint referral to Whaikaha that raises immediate health and safety concerns of disabled people
	4. supports are not culturally responsive
	5. an unexpected death, or a death where there have been potential quality issues identified
	6. concerns about a provider and how they are managing a complaint or incident
	7. Whaikaha determines that a more in-depth and targeted assessment of services is required
	8. a repeated pattern of quality issues and poor provider quality.

### Keeping the complainant updated

1. The Whaikaha complaint lead is responsible for regular, accessible, clear and informative updates to the complainant, using the complainant’s preferred form of communication.
2. At a minimum the complaint lead must provide an update to the complainant within 20 working days of Whaikaha receiving the complaint, and every 20 days following until the complaint is resolved.
3. The response to the complainant should, as far as possible, explain the outcome of the complaint and provide reasons for any decisions made or remedies offered. The response should include information about other possible remedies, if the complainant is not satisfied.
4. The Ombudsman provides the following advice for managing unreasonable complaint conduct:

*“Most complainants act responsibly. However, some complainants are difficult to satisfy and occasionally the conduct of some complainants can be challenging… It is important to remember that even where a person’s conduct may be unreasonable, they could have a valid complaint and that complaint should be handled appropriately. The key to managing unreasonable complainant conduct is to give fair consideration to the complaint, while ensuring there is no undue imposition on the agency or staff in doing so.”[[3]](#footnote-4)*

1. When closing a complaint, we should keep the goal of Poroaki Whakamutunga in mind, which is to leave people in a place of empowerment where they can feel confident to continue their journey.

### Complaint resolution

1. The Whaikaha complaint lead records the outcome of the complaint, including the result of the actions taken and the outcome.
2. If the complaint is partly or fully substantiated there are a number of ways the complaint can be resolved fairly and reasonably, including one or more of the following:
	1. the support provider **acknowledges** what has happened and provides an explanation.
	2. the provider **takes action** to address the concerns raised in the complaint, so they don’t occur again, either to the complainant or others supported by that provider. For example, the provider could reconsider or change a decision, implement training / education of staff or develop or amend policies or practices.
	3. the provider **apologises** to the complainant and relevant people involved in that complaint. An apology should be appropriate for meeting the needs of the affected person, for example they should be genuine, specifically address the complaint and be delivered in a culturally appropriate way.[[4]](#footnote-5) Whaikaha supports the development of a formal apology policy by providers for when complaints are upheld. It should acknowledge the harm caused and express regret for it having occurred. An effective apology will go some way towards the restoration of mana, trust and the relationship between the person and the provider, as well as Whaikaha.
	4. the provider, the complainant and other relevant parties undertake a relational **restorative practice or hohou te rongo** approach. Restorative practices aim to restore the mana and tapu of people after experiencing harm and to restore broken trust and relationships:

*“Restorative responses involve honest dialogue in a psychologically safe environment and are guided by a concern to address harms, meet needs, restore trust, mitigate repetition and promote repair.”*

*“Te ao Māori has its own restorative response of hohou te rongo (peace-making from a te ao Māori world view). Hohou te rongo is a kawa. Kawa is the collective and agreed values, principles and protocols that connect whānau, hapū, iwi and Māori communities.” [[5]](#footnote-6)*

* 1. **mediation** between the complainant and the provider to find a collaborative, non-adversarial resolution.
1. Whaikaha may also choose to take further action if needed, such as:
	1. ongoing monitoring of the issue
	2. talk to the NASC or EGL site about reviewing supports for the disabled person
	3. fund independent advocacy or supported decision making for the purposes of gaining the disabled person’s perspective for the complaint (on a case-by-case basis)
	4. commission a follow-up evaluation, investigation or a visit by Whaikaha to the service to check in with people and see whether improvements have been made
	5. consider any systemic issues that arise as a result of the complaint that should be considered and acted on
	6. if the process identifies that the provider demonstrates non-compliance or breach of contract, Whaikaha can trigger a performance management process and contract remedy clauses. These include considering the appointment of a temporary manager, quality advisor, or agreeing on a remedy plan to address the issues within certain timeframes.
2. If the complaint is not substantiated, the provider should still take action to restore the relationship with the complainant.

### Review of complaint outcome

1. If the complainant is not satisfied with the outcome of the complaint, or how it has been managed, they can ask Whaikaha for a review of the complaint outcome. In the first instance the complaint will be reviewed by the manager of the relevant team, and if not resolved, there may be a final review of the outcome of the complaint by the General Manager Quality and Insights for a final decision.
2. If the complainant would like to have their complaint independently reviewed, they can contact:
	1. The Nationwide Advocacy Service <https://advocacy.org.nz/>
	2. The Office of the Ombudsman <https://www.ombudsman.parliament.nz/>
	3. The Office of the Health and Disability Commissioner <https://www.hdc.org.nz/>
	4. The Human Rights Commission <https://tikatangata.org.nz/>
	5. The Privacy Commission <https://privacy.org.nz/>

### Closing the complaint

1. When the Whaikaha complaint lead is satisfied that all necessary actions have been taken to resolve the issues raised in the complaint, they will discuss this with the Whaikaha Quality and Performance Team, and the complaint will be closed. This will only happen once the complainant, the disabled person(s) involved if different from the complainant and if appropriate, and the provider are all happy with the outcome, or have been informed of the outcome and advised that the complaint has been closed.

## How do we measure success?

1. Whaikaha wants to make our complaints process more accessible to disabled people, tangata whaikaha Māori and their families and whānau. If we are successful in this aim, it is likely that the number of complaints received will initially increase, rather than decrease. However, over time we hope to see the number of complaints decreasing as our quality and safeguarding mechanisms evolve.
2. Whaikaha is exploring ways to measure success and to seek feedback on how we did in managing each complaint.
3. We are developing our data and analysis about complaints to provide insights into how we can make disability supports better.

## Appendix One: Complaints risk assessment examples

This is not an exhaustive list and should only be used as a reference.

|  |  |  |  |
| --- | --- | --- | --- |
| **Complaint focus** | **Low/medium** | **High** | **Very High** |
| Wellbeing and rights of the disabled person | * Decrease (or lack) of choice and supported decision-making, e.g. in support, food, personal cares and activities of interest
* Poor communication
* Compatibility issues
* Unprofessional staff attitude to person
 | * Limited or restricted interaction with friends and family
* Disregard for people and their wellbeing
* Changes evident in the health, safety and wellbeing of people
* Punitive attitude towards people
 | * Allegations of any type of abuse or neglect
* People fearful of making a complaint or a mistake
* Issues relating to the safeguarding of, or denial of rights
* Health and safety concerns for people
 |
| Relationship with families | * Lack of communication or openness with families
* No or delayed responsiveness to requests made by families
 | * Multiple complaints received from families of concerns not being addressed
* Disrespectful attitude by staff to families
 | * Families moving person from the service
 |
| Service delivery | * Inadequate action or lack of competence to support the person to live their good life
* Inadequate response to complaints
* Poor staff orientation, induction, and training
* Noise complaints
 | * Repeated complaints
* Failure to deal with poor staff behaviour
* Inadequate recruitment and HR practices (eg, police vetting, orientation)
* Failure to recognize and manage health and safety needs
 | * Red flags of neglect (e.g. significant weight loss, pressure injuries, health needs missed or ignored by staff)
* Use of unauthorised or frequent restraint or seclusion
* Allegations of abuse by staff
 |
| Management and governance | * Lack of involvement of person and family in the organisational planning and decision making
* Poor management systems and management of money
* Privacy breach
 | * Lack of separation between management and governance
* Limited engagement, experience and understanding of the service by the governance board
 | * Quality concerns and complaints are not reviewed by management and the board
* Creditors stopping credit
* Theft of person’s money
 |

1. [Advocacy - Health and Disability Advocacy Service](https://advocacy.org.nz/). [↑](#footnote-ref-2)
2. For guidance on what to discuss, or to use as a template to fill in, use the complaints form on the Whaikaha website: [Disability services complaints and feedback | Whaikaha - Ministry of Disabled People](https://www.whaikaha.govt.nz/contact-us/complaints-feedback/). [↑](#footnote-ref-3)
3. [Effective complaint handling.pdf (ombudsman.parliament.nz)](https://www.ombudsman.parliament.nz/sites/default/files/2019-03/Effective%20complaint%20handling.pdf) [↑](#footnote-ref-4)
4. See the Ombudsman’s guidance to assist agencies in making apologies: [Apologies Guide August 2022.docx (live.com)](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ombudsman.parliament.nz%2Fsites%2Fdefault%2Ffiles%2F2022-08%2FApologies%2520Guide%2520August%25202022.docx&wdOrigin=BROWSELINK). [↑](#footnote-ref-5)
5. See the HQSC restorative practice guide to assist organisations to undertake restorative or hohou te rongo responses [He maungarongo ki ngā iwi: Envisioning a restorative health system in Aotearoa New Zealand | Te Tāhū Hauora Health Quality & Safety Commission (hqsc.govt.nz)](https://www.hqsc.govt.nz/resources/resource-library/he-maungarongo-ki-nga-iwi-envisioning-a-restorative-health-system-in-aotearoa-new-zealand/) [↑](#footnote-ref-6)