



Sensitive Claims: Claim Review Guidelines

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Claim Review Guidelines

This document outlines the Ministry of Education's process to review Sensitive Claims. It provides some wider context on the Sensitive Claims process followed by a guide to the **Claim Review** stage.

These Guidelines relate to individually reviewed claims under the full review process. Information regarding the Rapid and Prioritised Payments processes are not included in this document. (Information on those processes is available on the Ministry's website: [Rapid payment options](#))

Background

What are Sensitive Claims?

A sensitive claim is where a person believes they were abused or neglected in a New Zealand state school and would like some form of redress from the Ministry of Education. Eligible claimants must have attended:

- A specialist school before 1 October 1989 (including residential schools)
- A primary school before 1 October 1989
- Any state school that is now closed.

The allegations the Ministry receives can be wide ranging. The [Common Payment Framework](#) that applies to all Crown abuse in care redress agencies defines categories of abuse and neglect that can be considered by these agencies. The categories are physical abuse, sexual abuse, emotional / psychological abuse, and neglect.

Crown Resolution Strategy

The Crown has a Strategy for resolving historic abuse claims arising from abuse in state care. The [Crown Resolution Strategy](#) (2019) guides the Ministry's approach to resolving sensitive claims under its sensitive claims process.

The principles of the Strategy that guide the Crown are:

- Manaakitanga
- Openness
- Transparency
- Learning
- Being joined up
- Meeting obligations under Te Tiriti o Waitangi.


More information about the Crown Resolution Strategy can be found in the Sensitive Claims Business Process and Guidelines here: [Sensitive claims of abuse in state schools - Ministry of Education](#)

Sensitive Claims Process

The key stages of the sensitive claims process are summarised below. These Guidelines are about the **Claim Review** stage.

More information about the process is available in the Sensitive Claims Process and Guidelines here: [Sensitive claims of abuse in state schools - Ministry of Education](#)

Process summary



- **Receipt:** Claim lodged. May be direct by the Claimant (in writing or over the phone) or through their legal representative.

- **Triage:** Eligibility considered. Claim researched and relevant information collated. Claimant records released to claimant if requested under Privacy Act 2020.

- **Claim Review:** Allegations considered against relevant information to make findings about whether allegations are supported. Senior Engagement Advisor prepares Claim Review report to inform the Ministry's response..

- **Response:** Ministry provides its response to the Claimant, in writing. May include offer of settlement.

Claim Reviews

Purpose

The Claim Review process offers an opportunity for a Claimant to be heard and for their allegations to be carefully understood and considered by a Senior Engagement Advisor.

Roles and responsibilities

The Senior Engagement Advisor's role is to review the claim based on available information. It is an opportunity for the Claimant to share their experience with the Senior Engagement Advisor.

The Senior Engagement Advisor is responsible for:

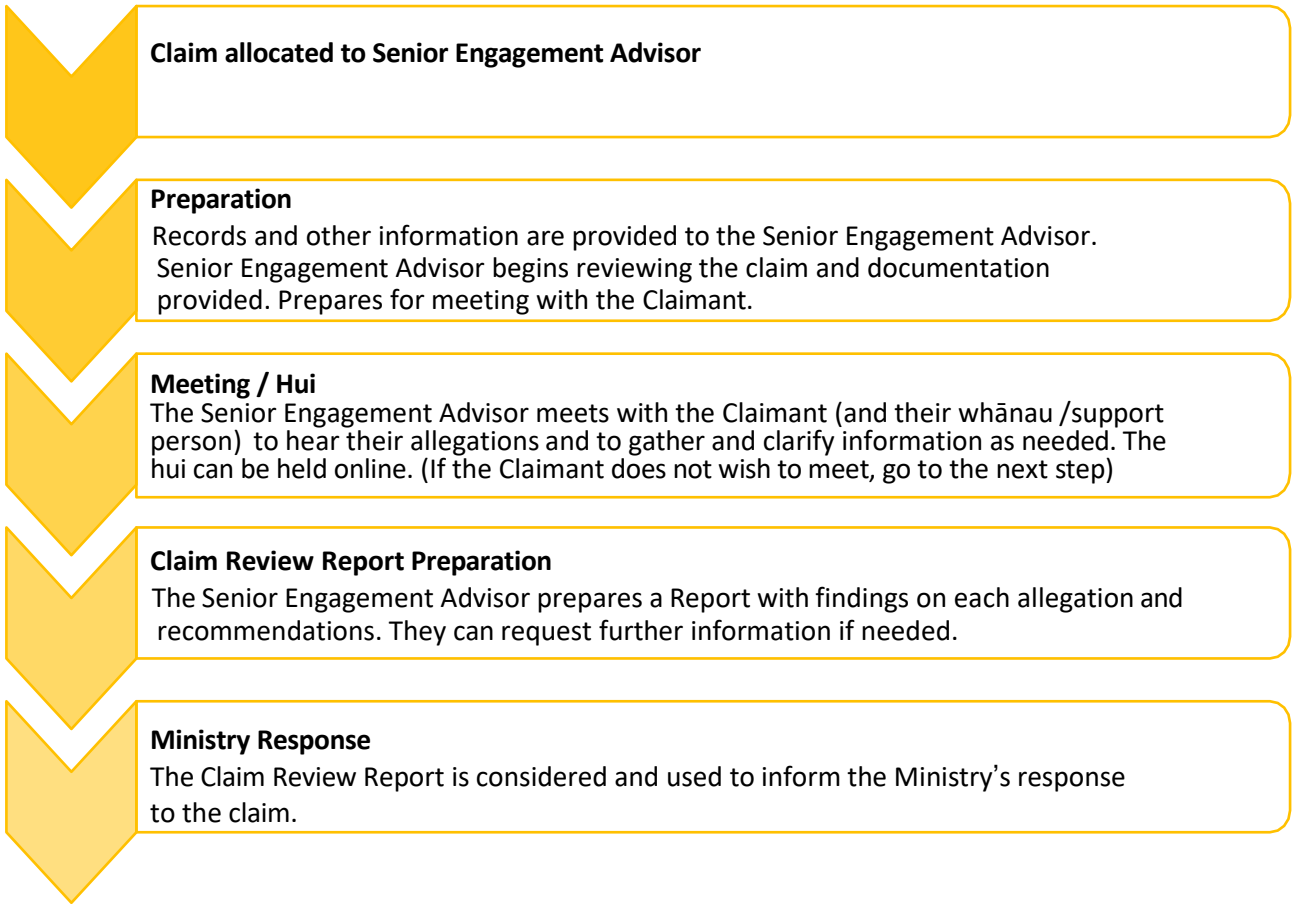
- Meeting the Claimant and hearing their experience - this is voluntary for the Claimant.
- Reviewing all available information and carefully considering the allegations made.
- Preparing a Claim Review report of findings and recommendations to inform the Ministry's response.

Purpose of the Claim Review Report

The Claim Review Report contributes to the Ministry's decision on the outcome of the claim. The information, findings and recommendations in the Report inform the Ministry's response to the Claimant's allegations. The Report does not consider the amount of any financial redress offer where that is an outcome.

Claim Review overview

The steps of the Claim Review process are outlined below:



Claim Review Steps

The Senior Engagement Advisor allocated to the claim will confirm whether the Claimant would like to meet with them.

Some Claimants do not want to or cannot have a meeting with the Senior Engagement Advisor.

This means that the Senior Engagement Advisor completes their report based on the available information provided by the research team.

In this case, the Senior Engagement Advisor can skip the Meeting section below and continue at the Report section.

The Senior Engagement Advisor is responsible for arranging the meeting. This can be held online. If a Claimant would like to meet in person, the Senior Engagement Advisor arranges any travel needed for the Claimant.

Meeting preferences

The Ministry will make all efforts to accommodate a Claimant's preferences for the meeting including:

- Whether or not the Claimant would like to meet with the Senior Engagement Advisor
- Flexibility around timing and location (if not online) that will suit the Claimant,
- Who should attend the meeting,
- Ensuring the Claimant's needs and support requirements are met, and
- Accommodating cultural and spiritual practices.

Cultural and spiritual practices, attendees, and recording

The Ministry aims to accommodate any cultural and spiritual practices a Claimant would like recognised at the meeting.

For Claimants who identify as Māori and seek a Kaupapa Māori approach, the Ministry will consider: the availability of a Māori Senior Engagement Advisor, whether a translator is required, arranging the hui at a marae, and understanding and adhering to the tikanga as outlined by the Claimant.

Where a support person attends the meeting with the Claimant, the Senior Engagement Advisor should make sure the Claimant is comfortable with the support person hearing about their experiences.

The Senior Engagement Advisor will confirm the Claimant is comfortable having the meeting recorded .

Who attends the meeting?	
Attendee	Role during the meeting
Claimant	To share their experience with the Senior Engagement Advisor to support their claim.
Senior Engagement Advisor	To listen to the Claimant's experience and ask questions to clarify their understanding of the issues. The Senior Engagement Advisor leads the meeting and introduces others in attendance. Depending on the meeting, a fellow Senior Engagement Advisor or Senior Advisor may also attend the meeting. This will be agreed with the Claimant in advance.
Claimant's Support person / whānau	To support them through sharing their experience, the Claimant can bring a whānau member or other support person to the meeting. A support person may also respond to further questions. The Claimant can bring more than one support person with them.
Claimant's Legal Representative (if they have one)	To organise the meeting with the Senior Engagement Advisor on the Claimant's behalf and usually attend the meeting. The legal representative may take notes for their client.

Meeting

The table below sets out an overview of the meeting process.

Opening

- Senior Engagement Advisor opens the meeting, with any requested cultural or spiritual practice.
- Senior Engagement Advisor introduces themselves - other attendees do the same.
- Senior Engagement Advisor confirms with the Claimant again that they are happy for their meeting to be recorded. If not recorded, the Senior Engagement Advisor will take notes during the meeting.
- Senior Engagement Advisor outlines the purpose of meeting.
- Claimant is advised they can take breaks as needed.

During

- Senior Engagement Advisor listens to the Claimant's story and gathers details of their allegations - what happened, who was involved, when and where.
- Senior Engagement Advisor asks questions to clarify and gather information (but not to directly challenge a Claimant's story).
- Senior Engagement Advisor confirms the issues the Claimant wants resolved and what outcomes they seek under this process.
- Senior Engagement Advisor notes any allegations that may need to be referred outside the Ministry – for later discussion within the Sensitive Claims team.
- Senior Engagement Advisor should ask the Claimant if they have any additional supporting documentation to share.

Ending

- Before ending the meeting, the Senior Engagement Advisor confirms whether there is any other information the Claimant thinks is important to consider in the Claim Review.
- Senior Engagement Advisor checks whether the support person has any questions.
- Senior Engagement Advisor explains what happens after the meeting/the next steps in the process.
- With the endorsement of the Claimant, the Senior Engagement Advisor closes the meeting, following the same cultural or spiritual practice as at the opening (if any).

Afterwards

- Senior Engagement Advisor may have further conversations with the Claimant, if more information is required for the Claim Review (and the Claimant agrees to that).

Writing the Claim Review Report

The Claim Review Report provides the Senior Engagement Advisor's findings on each of the allegations made and their recommendations on whether allegations should be included in a settlement offer to a Claimant. This section guides Senior Engagement Advisors on writing the Report.

A reminder that:

- The Ministry's approach is that an allegation alone will not be sufficient to support it for the purpose of inclusion in a settlement offer and additional information is required.
- Individual claims are reviewed on a case-by-case basis and each allegation in the claim is reviewed separately.
- Senior Engagement Advisors use the Claim Review Report template to write their report and must complete the table of allegations (**Appendix 3**). This report is subject to legal privilege.
- The Senior Engagement Advisor should ensure that they only review allegations that relate to the Ministry. Any allegations related to other redress agencies cannot be included in the Claim Review and must be referred to the relevant agency.

Claim Review table of allegations

- The Report template (**Appendix 3**) provides guidance on how to complete it and what to include. A short summary follows.
- Senior Engagement Advisor must set out a brief description of each **allegation** from the Claimant. Where the information is available, this should include:
 - References in the allegation (or from the meeting with the Claimant) that relate to how often and over what timeframe the issue may have occurred.
 - Who was responsible (e.g. a teacher, students, or residential workers).
- Senior Engagement Advisor must list the relevant **records and/or other information** they consider and provide references to the required Indicators (**Appendix 2**).
- Senior Engagement Advisor provides their **analysis** of the information and **findings** on the allegation, followed by their **recommendation** on whether the allegation should be included or not included in a settlement offer.

Indicators: Records and/or other supporting information

- Senior Engagement Advisors must use the Indicators (**Appendix 2**) to identify the information required to consider supporting an allegation.
- Information required by the Indicators must be identified to enable consideration of whether an allegation should be supported for settlement. If the information required is not identified, the Ministry will not be able to consider including the allegation in a settlement offer.
- Indicator information includes Ministry records and other information the Ministry holds or was otherwise provided with relating to the time period of the allegations. Claimants may also provide documented information for consideration.
- Often the Indicators will require information relating to both the school / staff and the Claimant. Sometimes, for allegations about staff (rather than other students), information relating to the Claimant may be sufficient to consider supporting the allegation (as noted in the Indicator footnotes). Senior Engagement Advisors should, however, consider all available information and include it in their report as relevant.

Similar allegation indicator

One indicator is a similar allegation by another claimant (or claimants) who: attended the same school as the Claimant at the same time, or a similar time; or, they attended another school and their allegation is about the same identified staff member.

A similar allegation by another claimant can be considered supporting information for the current Claimant's allegation **provided that** the similar allegation was or will be included for settlement on the basis of documented supporting information (not another similar allegation), and that information does not clearly point against it supporting the current Claimant's allegation.

The Sensitive Claim research team will provide Senior Engagement Advisors with information on similar allegations.

Analysis and findings

- The Senior Engagement Advisor considers whether, taking the available information into account and the Indicator requirements, the allegation is reasonably supported or not.
- Senior Engagement Advisors should consider what the information shows in relation to the allegation. For example:
 - Is it directly relevant or more contextual?
 - How detailed is it?
 - What is its source?
 - When and why was it created?
 - How strong or definitive is the information?
- Senior Engagement Advisors consider information on its own and together with other information available relating to the allegation.
- If a Senior Engagement Advisor considers the available information does not reasonably support a serious allegation, but it does support less serious or a different degree of abuse or neglect, the Senior Engagement Advisor should include that finding. The reverse also applies. This is provided the required Indicators are still met.

Recommendations

- Senior Engagement Advisors must note any form of redress that the Claimant has discussed or requested (aside from a financial payment offer and an apology from the Secretary of Education) and, if considered appropriate, can recommend the Ministry consider it.
- Senior Engagement Advisors do not provide recommendations on redress payment amounts. The Ministry determines any payment amount at the next stage of the process (**Response**), using the Common Payment Framework.

Referencing supporting information

- Senior Engagement Advisors must reference all information relied on in their report, via footnotes.
- In the Claim Review table of allegations, the Senior Engagement Advisor should identify the records relating to each allegation.

Consistency with settled claims

The Sensitive Claims research team provides the Senior Engagement Advisor with information about previously settled claims that are similar to the claim being reviewed.

While each claim is reviewed individually on a case-by-case basis, reviewing findings on similar allegations made in prior claims helps support reasonable consistency between claims where this is appropriate.

If the Senior Engagement Advisor considers a different finding for a similar claim is appropriate, they should clearly explain why in their report. This may be the case, for example, if different supporting information is available for different claims (e.g., personal records).

Additional guidance on report writing:

- **Type of allegations:** A claim can include a range of allegations. Senior Engagement Advisors should confirm that the allegations come within the types of abuse and neglect defined in the Common Payment Framework.
- **Time period of the allegations:** Senior Engagement Advisors should review allegations against the relevant policies and standards of the time. Something that would not be acceptable today may have been acceptable during the relevant time period. For example:
 - What was the policy around corporal punishment at the time?
 - Was the school's use of time out appropriate given the guidance they were operating under that year?
- **Frequency:** Senior Engagement Advisors identify and comment on any information (from the Claimant and/or records) relating to how often, and over what time period, the allegations occurred. If there isn't any information indicating frequency, they should say that. (Note, Senior Engagement Advisors should not categorise frequency under the Framework.)
- **Severity:** Senior Engagement Advisors identify and comment on any information relating to the specific nature of the allegations that occurred, including severity. If there isn't any information indicating severity, they should say that. (Note, Senior Engagement Advisors should not categorise severity under the Framework.)
- **Alleged perpetrator:** Senior Engagement Advisors identify whether the allegation was perpetrated by staff or another student. If the allegation is about abuse by other students, the Senior Engagement Advisor must also consider whether the school contributed to the abuse occurring or continuing. The Inadequate Supervision or Inaction indicator is required in order to consider supporting allegations about abuse by other students.

Sensitive Claims: Appendices to the Claim Review Guidelines

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Appendix 1: Frequently Asked Questions

What happens to the Senior Engagement Advisor's report?

The Senior Engagement Advisor's final report, following an internal review and approval process, is provided to a Senior Advisor Claims who drafts a Ministry response to the claim. Senior Engagement Advisors and Senior Advisors Claims may discuss the report if needed (for example, to clarify a finding). Report findings and recommendations are used to inform the Ministry's responses to claims.

Can the Senior Engagement Advisor talk to third parties?

From time to time, the Senior Engagement Advisor may consider it appropriate to talk to third parties (e.g., ex- school staff) to gather information to support a Claim Review. If a Senior Engagement Advisor would like to talk to a third party, they must discuss this with the Claims Manager.

If the Ministry wants to share information about a claimant and their claim (e.g., to a potential witness to assist with the claim review), the Ministry must ensure legal obligations are met, including those under the Privacy Act 2020.

Court orders prevent the Ministry (and its Senior Engagement Advisors) from sharing information contained in filed claims with third parties unless the Ministry has received the claimant's consent or permission from the court.

Can Claimants receive Claim Review Reports?

Information from Claim Review Reports is shared with Claimants as part of the response they receive from the Ministry about the outcome of their claim.

The Claim Review Reports are internal Ministry documents and are not released to Claimants.

What if the Claimant has questions around timeline or specific parts of the process?

During the meeting the Claimant might ask specific questions about their claim, the review process and/or wider Sensitive Claims processes which the Senior Engagement Advisor may not know the answer to. The Senior Engagement Advisor should make a list of these questions and later share it with the Claims Manager and other Sensitive Claims team staff who can assist with the response.

The Senior Engagement Advisor is the claimant's contact person throughout the review process, and providing information to claimants and responding to any questions is an important part of their role.

What allegations can be reviewed as part of the claim review?

The Common Payment Framework defines categories of abuse and neglect that all abuse in care Crown redress agencies must use to consider claims. They are:

- Physical Abuse
- Sexual Abuse

- Emotional/Psychological Abuse
- Neglect

For more information, including examples of abuse and neglect, you can access the Common Payment Framework on [About the Common Payment Framework - Redress New Zealand](#)

Appendix 2: Indicators

Indicators are used when reviewing claims under the Ministry's full assessment process. They outline the type of information required to consider supporting an allegation for settlement. Senior Engagement Advisors make findings on each allegation and recommend, based on the available information, whether a claimant's allegations should be supported for the purpose of settlement.

The indicators are grouped according to the types of abuse and neglect contained in the [Common Payment Framework \(CPF\)](#). There are sub-groups of indicators for some forms of abuse that are commonly alleged in Ministry claims.

Groups of Indicators

Type A: Physical abuse

- A1: Physical abuse by staff (general)
- A2: Physical abuse by staff (misuse of corporal punishment)
- A3: Physical abuse by staff (misuse of physical restraint)
- A4: Physical and/or emotional/psychological abuse by staff (harmful behaviour management practice / punishment)

Type B: Sexual abuse

- B1: Sexual by staff

Type C: Emotional / Psychological abuse

- C1: Emotional / Psychological abuse by staff (general)
- C2: Emotional / Psychological abuse by staff (misuse of timeout)
- C3: Witnessing or being forced to witness acts of serious abuse by staff
- C4: Witnessing or being forced to witness acts of serious abuse by students (due to inadequate supervision or inaction)

Type D: Neglect

Type E: Physical, sexual, or emotional/psychological abuse by students (due to inadequate supervision or inaction)

Type A: Physical abuse

A1: Physical abuse by staff (general)

Definition (CPF): Actions that result in, or could result in, physical harm or injury to a survivor. (Refer to the CPF for severity level definitions.)

Examples can include:	Indicators required to consider supporting allegation: records and/or other information
<ul style="list-style-type: none"> • Slapping/hitting with an open hand, shoving /pushing, hair pulling, ear pulling, tripping, kicking • A staff member/carer directing another survivor to physically assault another survivor • Inappropriate use of medical treatment (e.g. over medication in psychiatric facilities) • Striking, closed fist punching, whipping, stomping/kicking, blows to the head or body • Being slammed against a wall • Being held forcefully by the neck or throat • A loss of consciousness • Broken bones and dislocated joints • Serious burns • Internal injuries including brain damage. 	<p>1. Incidents involving the claimant:</p> <ul style="list-style-type: none"> a. Records of incidents (or the type of incidents) complained about by the claimant; or b. Other information in records about the claimant supporting the alleged incidents.
	<p>AND¹</p>
	<p>2. Concerns about identified staff during the period of the claimant attended:</p> <ul style="list-style-type: none"> a. Complaints or concerns about identified staff members in relation to matters relevant to the claimant's allegation. These may be recorded in letters of complaint (by the claimant or other students), disciplinary records and/or investigations by the school, Police investigations and/or information about prosecutions; OR b. Similar allegation received from: other students (or student) attending at the same time, at a different time within two years of each other; or other students at different schools about staff present at the same time as the claimant. <i>(Also use the Claim Review Guidelines on this indicator.)</i>
<p>OR</p>	<p>3. Concerns about staff practice during the period the claimant attended:</p> <p>Records and/or other information indicating concerns about staff physical treatment of students at the school. This may be recorded in reviews and inspection reports, letters of complaint (by the claimant or other students), disciplinary records and/or investigations by the school.</p>

¹ Noting there may be occasions where records and/or supporting information identified under part 1 are sufficient to consider supporting the allegation for settlement. Parts 2 and 3 will still be considered, however, as Senior Engagement Advisors consider all available information.

Type A: Physical abuse

A2: Physical abuse by staff (misuse of corporal punishment)

Definition (MOE): Misuse of corporal punishment in breach of bylaws, policies, procedures and/or standard practice in place at the time.

Examples can include:	<i>Indicators required to consider supporting allegation: records and/or other information</i>
<p>CPF: Excessive corporal punishment that is outside of policy.</p> <p>MOE:</p> <ul style="list-style-type: none"> • Using more strokes than is authorised • Using corporal punishment for inappropriate reasons 	<p>1. Use of corporal punishment for the claimant:</p> <ul style="list-style-type: none"> a. Records of corporal punishment being used with the claimant such as punishment returns, the claimant’s school file, incident reports, daybooks; or b. Other information in records about the claimant supporting the allegation. (E.g., the nature of their recorded behaviour at the time means corporal punishment was likely used.)
	<p>AND²</p>
	<p>2. Concerns about identified staff during the period the claimant attended:</p> <ul style="list-style-type: none"> a. Complaints or concerns about identified staff in relation to matters relevant to corporal punishment. This may be recorded in reviews and inspection reports, letters of complaint (by the claimant or other students), disciplinary records and/or investigations by the school; OR b. Similar allegation received from: other students (or student) attending at the same time, at a different time within two years of each other; or other students at different schools about staff present at the same time as the claimant. (<i>Also use the Claim Review Guidelines on this indicator.</i>)
	<p>OR</p> <p>3. Concerns about staff practice in relation to use of corporal punishment during the period the claimant attended:</p> <p>Records and/or other information indicating concerns about the use of corporal punishment at the school. This information may be recorded in reviews and inspection reports, letters of complaint (by the claimant or other students), disciplinary records and/or investigations by the school).</p>

² Noting there may be occasions where records and/or supporting information identified under part 1 are sufficient to consider supporting the allegation for settlement. Parts 2 and 3 will still be considered, however, as Senior Engagement Advisors consider all available information.

Type A: Physical abuse

A3: Physical abuse by staff (misuse of physical restraint)

Definition (MOE): Misuse of physical restraint in breach of bylaws, policies, procedures and/or standard practice in place at the time.

Examples can include:	<i>Indicators required to consider supporting allegation: records and/or other information</i>
<p>CPF: Misuse of physical restraint that is outside of policy.</p> <p>MOE: Excessive use of force</p>	<p>1. Use of physical restraint for the claimant:</p> <ul style="list-style-type: none"> a. Records of physical restraint being used with the claimant, such as in the claimant’s school file, incident reports, daybooks; or b. Other information in records about the claimant supporting the allegation. (E.g., the nature of their recorded behaviour at the time means physical restraint was likely used.)
	<p>AND³</p>
	<p>2. Concerns about identified staff during the period the claimant attended:</p> <ul style="list-style-type: none"> a. Complaints or concerns about identified staff member/s in relation to matters relevant to physical restraint. This may be recorded in letters of complaint (by the claimant or other students), disciplinary records and investigations by the school; OR b. Similar allegation received from: other students (or student) attending at the same time, at a different time within two years of each other; or other students at different schools about staff present at the same time as the claimant. <i>(Also use the Claim Review Guidelines on this indicator.)</i>
	<p>OR</p> <p>3. Concerns about staff practice in relation to use of physical restraint during the period the claimant attended:</p> <p>Records and/or other information indicating concerns about the use of physical restraint at the school. This may be recorded in reviews and inspection reports, as well as other documents such as letters of complaint (by the claimant or other students), disciplinary records and investigations by the school.</p>

³ Noting there may be occasions where records and/or supporting information identified under part 1 are sufficient to consider supporting the allegation for settlement. Parts 2 and 3 will still be considered, however, as Senior Engagement Advisors consider all available information.

Type A: Physical abuse and/or emotional/psychological abuse

A4: Physical abuse and/or emotional/psychological abuse by staff (harmful behaviour management practice / punishment)

Definition (MOE): These are punishments and behaviour management practices used by staff at the school that are harmful, or used with the claimant in a manner that is harmful.

Examples can include:	<i>Indicators required to consider supporting allegation: records and/or other information</i>
<p>CPF:</p> <ul style="list-style-type: none"> • Harsh physical punishment (e.g., being forced to eat soap) • Harsh or harmful punishment intended to shame. <p>MOE:</p> <ul style="list-style-type: none"> • Children made to wear wet bedclothes after wetting the bed • Not given sufficient food as punishment • Prevented from contacting parents • Made to wear inappropriate clothing, e.g. a nightie. 	<p>1. Incidents involving the claimant</p> <ul style="list-style-type: none"> a. Records of incidents (or the type of incidents) complained about by the claimant; or b. Other information in records to indicate the behaviour management practice complained about was likely used with the claimant.
	<p>AND⁴</p>
	<p>2. Concerns about identified staff during the period the claimant attended:</p> <ul style="list-style-type: none"> a. Complaints or concerns about the behaviour management practice of named or identified staff member/s relevant to the claimant's allegation. This could be recorded in letters of complaint (by the claimant or other students), disciplinary records and investigations by the school; OR b. Similar allegation received from: other students (or student) attending at the same time, at a different time within two years of each other; or other students at different schools about staff present at the same time as the claimant. <i>(Also use the Claim Review Guidelines on this indicator.)</i>
	<p>OR</p>
	<p>3. Concerns about the school's behaviour management practice during the period the claimant attended relevant to the allegation:</p> <ul style="list-style-type: none"> a. The school used the behaviour management practice of the type complained about; and (b or c): b. Concerns indicating unacceptable or harmful use by staff of the otherwise accepted behaviour management practice at the school (e.g., breached school policy). This may be recorded in reviews and inspection reports, other documents such as letters of complaint (by the claimant or other students), disciplinary records and investigations by the school; or c. The behaviour management practice used was not acceptable for the time. (This may be indicated in records and/or by prior Ministry responses to claims.)

⁴ Noting there may be occasions where records and/or supporting information identified under part 1 are sufficient to consider supporting the allegation for settlement. Parts 2 and 3 will still be considered, however, as Senior Engagement Advisors consider all available information.

Type B: Sexual abuse

B1: Sexual by staff

Definition (CPF): Actions that involve forcing or enticing a survivor to take part in sexual activities, whether the survivor is aware of what's happening or not. It may or may not involve direct contact. (Refer to the CPF for severity level definitions.)

Examples can include:	Indicators required to consider supporting allegation: records and/or other information
<ul style="list-style-type: none"> • Being exposed to indecent material (whether, written, spoken or visual) • Acts for the purpose of sexual gratification of the perpetrator, eg survivor sitting on their lap, being watched when undressing • Being made to watch or view genitals, inappropriate sexual talk • Encouraging a survivor to look at pornography or behave in a sexually inappropriate way • Grooming a survivor in preparation for sexual abuse (this may be done via the internet) • Kissing, fondling, rubbing, genital touching or masturbation of or by the perpetrator – may be under or over clothing • Forcing or enticing a survivor to take part in sexual activities whether the survivor is aware of what is happening or not • Sexual connection, rape and oral sex • It can involve a part of the body of the perpetrator or an object • A staff member/carer involving the survivor in the making of pornography or in prostitution. 	<p>1. Incidents involving the claimant:</p> <ul style="list-style-type: none"> a. Records of incidents (or the type of incidents) complained about by the claimant; or b. Other information in records about the claimant supporting the alleged incidents.
	<p>AND⁵</p>
	<p>2. Concerns about staff during the period the claimant attended:</p> <ul style="list-style-type: none"> a. Complaints or concerns about named or identified staff member/s. These are matters relevant to the claimant's allegation and could be recorded in letters of complaint (by the claimant or other students), disciplinary records and investigations, Police investigations and/or information about prosecution; OR b. Similar allegation received from: other students (or student) attending at the same time, at a different time within two years of each other; or other students at different schools about staff present at the same time as the claimant. <i>(Also use the Claim Review Guidelines on this indicator.)</i>

⁵ Noting there may be occasions where records and/or supporting information identified under part 1 are sufficient to consider supporting the allegation for settlement. Part 2 will still be considered, however, as Senior Engagement Advisors consider all available information.

Type C: Emotional / Psychological abuse

C1: Emotional / Psychological abuse by staff (general)

Definition: Actions (not physical or sexual) that can demean or harm a survivor emotionally. It is generally verbal but may take other forms. It is generally a pattern of behaviour over time, rather than single or isolated incidents. (Refer CPF for severity level definitions.)

Examples can include:	Indicators required to consider supporting allegation: records and/or other info
<ul style="list-style-type: none"> • Repeated name calling • Criticising, belittling, demeaning, mocking, misogynist and racist slurs • Accusing, blaming, insulting, threatening abandonment, manipulating, taking advantage, screaming, yelling • Engaging a survivor in criminal acts, making them tell lies • Strip searches that fell outside policy or legislation at the time • Threats of punishment • Harsh or harmful punishment intended to shame • Witnessing or being forced to witness acts of serious abuse • Having a rifle/gun pointed towards the survivor • Being made to dig a hole into which the survivor is threatened to be buried • Actions which induced the survivor to believe death was imminent such as firing a gun towards survivor. 	<p>1. Incidents involving the claimant:</p> <ul style="list-style-type: none"> a. Records of incidents (or the type of incidents) complained about by the claimant; or b. Other information in records about the claimant supporting the alleged incidents.
	<p>AND⁶</p>
	<p>2. Concerns about identified staff during the period the claimant attended:</p> <ul style="list-style-type: none"> a. Complaints or concerns about named or identified staff member/s. These are matters relevant to the concerns raised by the claimant and could be recorded in letters of complaint (by the claimant or other students), disciplinary records, Board minutes and investigations by the school; OR b. Similar allegation received from: other students (or student) attending at the same time, at a different time within two years of each other; or other students at different schools about staff present at the same time as the claimant. <i>(Also use the Claim Review Guidelines on this indicator.)</i>
<p>OR</p>	<p>3. Concerns about staff practice during the period the claimant attended:</p> <p>Records and/or other information indicating concerns regarding staff treatment of students (non-physical, non-sexual) at the school relevant to the allegation. This information may be recorded in reviews and inspection reports, as well as other documents such as letters of complaint (by the claimant or other students), disciplinary records and investigations by the school.</p>

⁶ Noting there may be occasions where records and/or supporting information identified under part 1 are sufficient to consider supporting the allegation for settlement. Parts 2 and 3 will still be considered, however, as Senior Engagement Advisors consider all available information.

Type C: Emotional / Psychological abuse

C2: Emotional / Psychological abuse by staff (misuse of timeout)

Definition (CPF): Being placed in secure cells, seclusion, timeout, isolation or otherwise detained (such as in a shed or on 'Alcatraz' at the Whakapakari programme) may constitute emotional /psychological abuse for the purposes of these definitions.

Examples can include:	<i>Indicators required to consider supporting allegation: records and/or other information</i>
<p>CPF: Excessive use of timeout where the conditions and/or duration are outside policy or other documented standards.</p> <p>MOE:</p> <ul style="list-style-type: none"> • Kept in timeout for long (excessive) time periods outside procedure • Put in timeout for reasons not in accordance with policy (e.g., for punitive reasons). 	<p>1. The school had a timeout room or practice:</p> <ul style="list-style-type: none"> a. School had a timeout room; or b. Information shows school had a timeout practice that involved separating students from others (e.g. placing students in the hall).
	AND
	<p>2. Use of timeout for the claimant:</p> <ul style="list-style-type: none"> a. Records of timeout being used with the claimant, such as references from timeout registers, school file, incident reports, daybooks; or b. Other information in records to indicate the claimant was placed in timeout. (E.g., the nature of their recorded behaviour means timeout was likely used.)
	AND⁷
<p>3. Staff misuse of timeout while claimant attended the school:</p> <ul style="list-style-type: none"> a. Complaints or concerns about identified staff member's use of timeout during time the claimant attended (this may have resulted in investigation and/or disciplinary action for timeout policy breach); or b. Records of other students placed in timeout in breach of policy during time the claimant attended; or c. Concerns raised about staff practice concerning the use of timeout in reviews or investigations of the school (e.g., ERO Reports); or d. Statements made by staff witnesses about the use of timeout during investigations regarding the school. This could include Police investigations and statements made during court proceedings; or e. Similar allegation received from: other students (or student) attending at the same time, at a different time within two years of each other; or other students at different schools about staff present at the same time as the claimant. <i>(Also use the Claim Review Guidelines on this indicator.)</i> 	

⁷ Noting there may be occasions where records and/or supporting information identified under parts 1 and 2 are sufficient to consider supporting the allegation for settlement. Part 3 will still be considered, however, as Senior Engagement Advisors consider all available information.

Type C: Emotional / Psychological abuse

C3: Witnessing or being forced to witness acts of serious abuse by staff

Examples can include:	<i>Indicators required to consider supporting allegation: records and/or other information</i>
<p>Witnessing or being forced to witness acts of serious abuse is an example of emotional / psychological abuse in the CPF.</p>	<p>1. Existing claim findings supported for settlement or formal records:</p> <ul style="list-style-type: none"> a. Existing findings about the student/s identified as experiencing the abuse that support the allegation; or b. Existing records of formal findings (e.g., police investigation, Court proceedings) held about the named or identified staff member that support the allegation (for example, relevant allegations in these records regarding students).
<p>Examples of serious abuse:</p> <ul style="list-style-type: none"> • Serious injuries (e.g., fracture) • Sexual assault (unlawful connection). 	<p><i>AND</i></p> <p>2. Records indicating that the claimant may have been present.</p>

Type C: Emotional / Psychological abuse

C4: Witnessing or being forced to witness acts of serious abuse by students (due to inadequate supervision or inaction)

Examples can include:	<i>Indicators required to consider supporting allegation: records and/or other information</i>
<p>Witnessing or being forced to witness acts of serious abuse is an example of emotional / psychological abuse in the CPF</p> <p>Examples of serious abuse:</p> <ul style="list-style-type: none"> • Serious injuries (e.g., fracture) • Sexual assault (unlawful connection). 	<p>1. Existing claim findings supported for settlement:</p> <ul style="list-style-type: none"> a. Existing findings about the student/s identified as experiencing the abuse that support the allegation; or b. Existing findings about serious abuse between students at the school during the time the claimant attended that support the allegation.
	<p><i>AND</i></p>
	<p>2. Records indicating that the claimant may have been present.</p>
	<p><i>AND</i></p>
<p>3. There was inadequate staff supervision or inaction when the claimant attended:</p> <ul style="list-style-type: none"> a. The school was short staffed, shifts/periods were running with less staff as there were no relievers to cover gaps, and staffing during shifts/periods was therefore not at the required level; or b. Staff were sleeping during their shift or not completing expected supervisory duties; or c. Staff witnessed, or were aware of, incidents complained about by the claimant and/or such incidents between students and did not intervene or respond; or d. Other information supporting that supervision was inadequate and this contributed to abuse by other students occurring or continuing. 	

Type D: Neglect

Definition (CPF): Neglect is where the basic needs of a survivor are not being met. This may be physical neglect, medical neglect or supervisory neglect. It is generally a pattern of behaviour over time, rather than single or isolated incidents. The severity of neglect is determined by considering both the nature of the neglect and the period of time over which it occurred.

Examples can include:	Indicators required to consider supporting allegation: records and/or other information
<p>CPF:</p> <ul style="list-style-type: none"> • An ongoing pattern or practice of allowing or requiring a survivor to miss school unjustifiably • Failing to provide the care required to maintain adequate personal hygiene • Failure to provide sufficient food or clothing or required medical treatment • Condoning the use of drugs, alcohol, or involvement in crime • Living in an environment where for periods of time there is insufficient food, running water, power, functioning toilet • Having to complete chores/work that are inappropriate for the age and stage of the survivor • Endangering the life of the survivor by not taking them to hospital or seeking appropriate medical help for a serious illness or injury where there is confirmation of that illness or injury • Physical neglect to the extent the survivor becomes malnourished or otherwise requires medical intervention • Serious physical and/or medical neglect over a long period of time such that the life of the survivor is threatened. 	<p>1. Incidents involving the claimant:</p> <ul style="list-style-type: none"> a. Records of incidents (or the type of incidents) complained about by claimant; or b. Other information in records about the claimant supporting the alleged incidents.
	<p>AND⁸</p> <p>2. Concerns about identified staff during the period the claimant attended:</p> <ul style="list-style-type: none"> a. Complaints or concerns about named or identified staff member/s relevant to the claimant's allegation. This could be recorded in letters of complaint (by the claimant or other students), disciplinary records, Board minutes and investigations by the school; OR b. Similar allegation received from: other students (or student) attending at the same time, at a different time within two years of each other; or other students at different schools about staff present at the same time as the claimant. <i>(Also use the Claim Review Guidelines on this indicator.)</i>
	<p>OR</p> <p>3. Concerns about staff practice during the period the claimant attended:</p> <p>Records and/or other information show concerns relating to the school's basic care responsibilities (e.g., food provision, access to education) that are relevant to the allegation. This information may be recorded in reviews and inspection reports, as well as other documents such as letters of complaint (by the claimant or other students), disciplinary records and investigations by the school.</p>

⁸ Noting there may be occasions where records and/or supporting information identified under part 1 are sufficient to consider supporting the allegation for settlement. Parts 2 and 3 will still be considered, however, as Senior Engagement Advisors consider all available information.

Type E: Physical, sexual or emotional/psychological abuse by students (due to inadequate supervision or inaction)

Definition (CPF): refer to the definitions above under staff physical (A1), sexual (B1) and emotional/psychological abuse (C3).

CPF: Alleged abuse by other students must arise from, or relate to, the acts or omissions of the State and have contributed to the abuse or neglect occurring or continuing, to be recognised.

MOE: For the purposes of claim review, the Ministry refers to this as inadequate supervision or inaction.

Examples can include:	<i>Indicators required to consider supporting allegation: records and/or other information</i>
<p>Refer to the CPF examples listed above under Type A1, B1 and C1.</p>	<p>1. Incidents involving the claimant:</p> <ul style="list-style-type: none"> a. Records of incidents complained about by the claimant; or b. Records of the type of incidents complained about occurring between students and records indicate such incidents occurred with the claimant; or c. Similar allegation from other students (or student) attending at the same time or within two years of each other. <i>(Also use the Claim Review Guidelines on this indicator.)</i>
	<p>AND</p> <p>2. There was inadequate staff supervision or inaction when the claimant attended:</p> <ul style="list-style-type: none"> a. The school was short staffed, shifts/periods were running with less staff as there were no relievers to cover gaps, and staffing during shifts/periods was therefore not at the required level; or b. Staff were sleeping during their shift or not completing expected supervisory duties; or c. Staff witnessed, or were aware of, incidents complained about by the claimant and/or such incidents between students and did not intervene or respond; or d. Other information supporting that supervision was inadequate and this contributed to abuse by other students occurring or continuing.

Appendix 3: Claim Review Report Template

The Senior Engagement Advisor prepares a Claim Review Report to inform the Ministry's response, using the report template provided. The template includes the Claim Review table of allegations.

Senior Engagement Advisors are reminded to:

- State allegations fully and accurately.
- Classify the allegations correctly using the Common Payment Framework definitions of abuse and neglect.
- Review documents that are relevant to the claim. If referring to information outside of the timeframe when the alleged actions occurred, the Senior Engagement Advisor should clearly explain how and why this is applicable.
- Ensure all records relied on are identified in the Report.



Memo

To: Claims Manager
From: <Click here to enter text>
Date: <Enter a date here>
Subject: Sensitive Claim: Review Report for [Claimant] (DOB: [xx/xx/xxxx])

Purpose

The purpose of this report is to determine whether [claimant] experienced abuse and/or neglect during their time at [the school].

Example:

1. *The purpose of this report is to assess Claimant's claim that they was/were sexually, physically and/or emotionally/psychologically abused, and/or neglected, when they was/were a student at School.*

Executive Summary

Include: Summary of claim, findings made and recommended response to allegations made.

Example:

2. *In summary this report finds that...*
3. *It is therefore recommended that you include these allegations in the settlement offer*
 - *Allegation #1*

Scope of Assessment

Include: Background information about the claim and description of the information reviewed, including:

- How was the claim received – in writing or verbally; filed / unfiled; through a representative, direct from the claimant or from another agency (i.e. MSD)?
- When did the claimant attend the school(s) that is the subject of the allegations? What age was the claimant when they started and ended their time at the relevant school(s)?⁹
- For filed claims, consider all filed documentation including any amended versions of the filed statement of claim.
- Has a letter of offer been received?
- Any other information received from the claimant or their representative?

⁹ Enrolment details should be footnoted

Example:

4. In *Year* (insert name of claimant's representative) wrote to the Ministry on behalf of *Claimant*. This letter set out *Claimant's* complaints about *their* time at *School* in *Year* and offered *\$amount* to settle the claim. A Statement of Claim was subsequently filed in the High Court citing particulars of the abuse and the damages claimed.¹⁰
5. Sources of information considered included:
 - *Filed documents [list]*
 - *Other documents / information received from claimant [list / summarise]*
 - *Claimant's personal file from School*
 - *Relevant school records including school policy and administration files*
 - *Ministry of Education files about [description]*
 - *Annual Reports for School*
 - *Education Review Office reports about School*
 - *Interview notes from meeting with Claimant on Date.*

List allegations determined to be out of scope in your review. You do not need to include these in the allegations table.

Background: *Claimant's name*

Include: Relevant background information about the claimant. This may include:

- situation at home (usually brief)
- previous schools attended
- reasons the claimant was sent to the school complained about
- education plans such as Individual Education plans (IEP) or integration plans
- information from any progress reports at the school complained about
- schools attended after the school complained about
- any information gathered from the meeting, including redress sought from the Ministry
- any other information relevant to the claim, including when there is no information available.

Background: *School name*

Include: Briefly summarise context, where relevant, relating to the school and specifically to the time when the claimant attended. Information may include:

¹⁰ Statement of Claim High Court Wellington: Claimant v The Attorney General (date): (case number).

- establishment of the school, enrolment, classes
- governance, staffing and overall purpose
- any other information that may be relevant to the claim and the claimant's time at the school, including any documented concerns regarding the school's practice (e.g., from ERO reports).

Recommended Redress

Set out recommended redress.

Example:

6. *The Claim Review table of allegations addresses each allegation that is in scope of the Sensitive Claims review process. Findings and recommended responses are summarised above (refer Executive Summary).*
7. *I recommend that the Ministry offers **Claimant** the following to resolve their claim:*
 - *A letter from the Secretary for Education apologising for **their** experiences at **School**; and*
 - *A payment.*

Signoff by Senior Engagement Advisor

Claim review table of allegations

Type of abuse / neglect	Allegation	Records and/or other information	Indicator reference/s (e.g., 1a)
<i>Split the rows into type of abuse and experience</i>	<i>Briefly describe allegation (including, if described, who was responsible, the specific nature of the alleged abuse, how often it occurred and over what timeframe?) Cross-reference to claim document where applicable, e.g., para 1(c) statement of claim.</i>	<i>A full list of records and/or other documented information, including any applicable similar allegation, is to be included in the report. These are abbreviated references that relate to the allegation made.</i>	
1. Emotional/Psychological abuse – misuse of time out	<i>On multiple occasions throughout their time at the school, the claimant experienced excessive use of time out, for periods of up to several hours. (Para 1(c) statement of claim, dated XX.)</i>	Day books: 1, 3, 5, 16, 17 [month], [year], Incident reports dates [x], [x], [x], student file [dates] Policies – time out policy [dated]	
Analysis and finding <i>Explain concisely what documented information you have used to make the finding, your reasoning for the finding, and recommend whether to include this allegation for the purpose of settlement. Include, where possible, who was responsible for the allegation, the specific nature of the alleged abuse, and (based on information from the claimant and/or records) how often it occurred and over what timeframe. Where information isn't available, please state this. Where available information may not support an allegation, please discuss this along with any information that does.</i>			Outcome <i>Provide your recommendation here</i>
<i>Information relating to this allegation indicate that [claimant] did experience excessive use of time out as alleged because....</i>			
<i>Policies state....</i>			
<i>Records indicate....</i>			
<i>Other information shows....</i>			
<i>Information not available....</i>			
Type of abuse / neglect	Allegation	Records and/or other information	Indicator reference
2.			
Analysis and finding			Outcome
Type of abuse / neglect	Allegation	Records and/or other information	Indicator reference
3.			
Analysis and finding			Outcome
Type of abuse / neglect	Allegation	Records and/or other information	Indicator reference
4.			
Analysis and finding			Outcome

Appendices

Policies and Procedures Relevant to the Claim

1. Include: A brief outline of relevant policies, procedures, guidance or bylaws (i.e., any formal standard) used to make findings about whether an allegation is supported or not supported for settlement.
2. You may have a separate sub-heading for each document with a brief analysis under each. The documents included in the report must relate to the allegation. The analysis may include a summary of policy wording and specific practice that staff followed.