

## Complaints – a cost analysis

### Background

As with other regulators, both in health and more broadly, we are seeing an increase in the number of complaints. Each complaint represents an opportunity to increase the public's safety and confidence in dealing with the profession.

In addition to a general increase in the number of complaints we are seeing an increase in physiotherapists speaking up by making complaints about conduct and or competence. We are pleased to see this as it shows practitioners taking an active role in ensuring public safety and in improving their profession.

The Board regularly fields questions from practitioners about the cost of complaints and the manner in which this cost is levied across the profession. This document outlines and answers the most frequent issues raised.

The Disciplinary Levy that is collected annually from all physiotherapists at the same time they are applying for an Annual Practising Certificate (APC) covers the cost of Professional Conduct Committees and Health Practitioners Disciplinary Tribunal. Other costs related to complaints such as legal fees and in-house staff time are included in the APC fee.

### What are the number and type of Complaints/Notifications?

Sources of complaints and notifications include ACC, patients, police, and other practitioners (mainly physiotherapists).

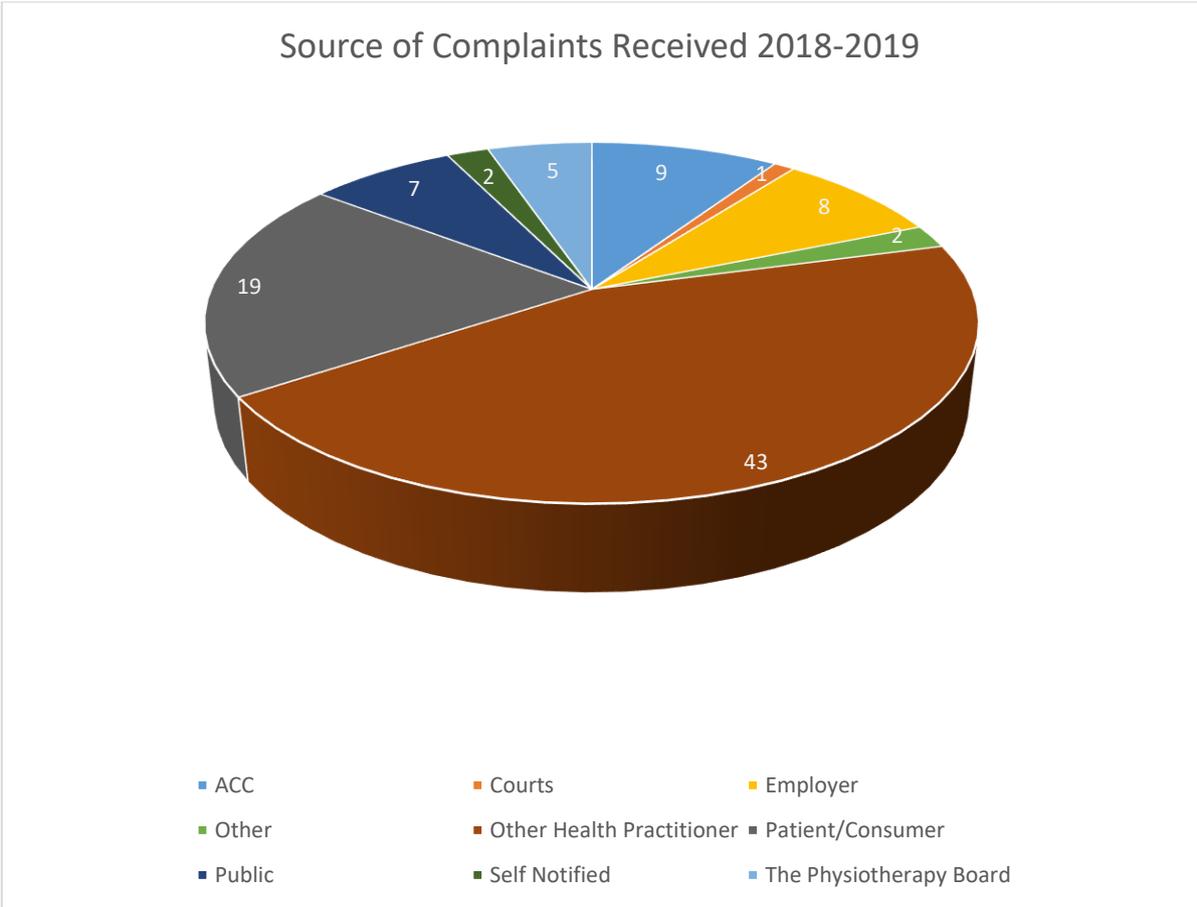
Conduct matters included serious allegations of sexual misconduct/assault, professional boundary issues, inappropriate claiming / fraud of ACC funding, practising without an APC, advertising, communication and record keeping. Competence allegations often directly related to the care and service provided and include allegations of misdiagnosing and or causing harm.

Very few complaints are made in bad faith. We receive a small number of complaints related to the price of a service provided however this is not within our jurisdiction.

In **2018/2019** practising year the Board received 96 complaints (including notifications from ACC). Of these 14 related to professional and sexual boundary allegations and 19 related to inappropriate treatment of family/whānau members (these were notifications from ACC).

### Who complains and notifies the Board?

Complaints come from a variety of sources. Below is the breakdown of the sources of complaints for the 2018 / 2019 year.



**What happens to Complaints/Notifications related to conduct?**

Several options are available to the Board, including a review of competence or an investigation into the alleged conduct.

Below is information related to one of the possible options; a referral to a Professional Conduct Committee (PCC) for investigation of the alleged conduct.

From the financial year 2014/2015 (beginning on 1 April 2014) to end of December 2019, there were:

- **233** individual practitioners who have been the subject of a complaint or notification
- **302** complaints (some practitioners were the subject of multiple complaints)

Of the **233** practitioners who were the subject of a complaint:

- **57 practitioners** were referred to a Professional Conduct Committee (PCC) for investigation.

Below is a breakdown of the types or categories of matters referred to PCC's for investigation. Whilst there were 57 practitioners, there were 65 matters under investigation because there can be multiple matters relating to an individual practitioner.

## Matters investigated by PCCs - April 2014 - December 2019



- Breach of Professional Boundary
- Breach of Advertising Standard
- Breach of Board's Orders
- Clinical Records -Missing/Destroyed/Substandard
- Notification of Conviction
- Other
- Practising without an APC
- Inappropriate treatment of whānau/family and/or related inappropriate claims to funders

The HPCA Act defines the possible outcomes (recommendations and determinations) from PCC investigations:

Recommendations:

- review of competence
- review fitness to practise
- review of scope of practice
- refer the matter to the Police
- counsel the practitioner

Determinations (these are final decisions and not open to the Board to change):

- no further actions
- charges be brought before the Health Practitioners Disciplinary Tribunal (HPDT)
- submitted to conciliation

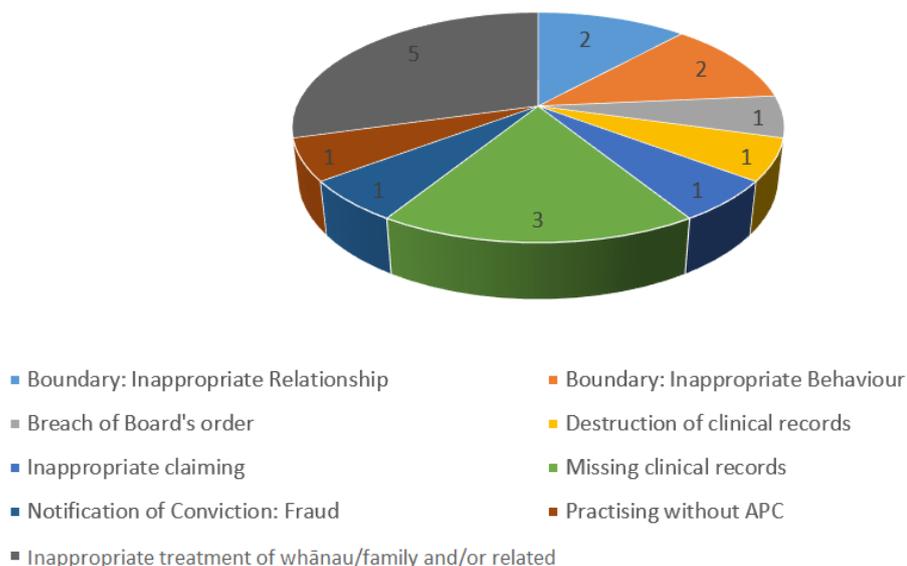
Of the **57 practitioners** referred to a PCC for investigation:

- **15** practitioners had charges laid before the Health Practitioners Disciplinary Tribunal (HPDT).

Below is a breakdown of the types of matters where the PCC laid charges to the HPDT. There can be multiple matters related to one practitioner.

A breakdown of possible outcomes of charges being laid in the HPDT appears below:

## Matters referred to HPDT - April 2014 - December 2019



*Note: Six cases are ongoing with outcomes yet to be determined.*

Overall approximately 24% of all practitioners who are the subject of a complaint or notification are referred to a PCC for investigation and approximately 28% of PCCs lay charges to the HPDT.

### What is the cost of PCC and HPDT cases?

PCC's and HPDT case costs are funded via the Disciplinary Levy which is collected annually from all physiotherapists when they apply for an Annual Practising Certificate (APC).

Costs can only be sought and awarded to a PCC once a case has been heard and determined by the HPDT in favour of the PCC.

Therefore, if a matter before a PCC does not result in charges being laid in the HPDT – no costs can be sought.

- The total costs of PCC's and HPDT's from 2014/2015 to end of December 2019 is **\$1.92 million**.

Of the **16** HPDT cases, nine have been closed and have had decisions on the awarding of costs.

The PCC and HPDT costs of nine closed HPDT cases is **\$778k** (HPDT cost). Of this **\$778k** of HPDT and PCC costs, the HPDT has awarded costs to be paid by the practitioners concerned to the Board of **\$223k**. The cost awarded by the HPDT of \$223k represents **28.67%** of the total cost of these nine closed HPDT cases.

To date **\$124k** (56%) of the \$223k awarded costs have been recovered from the practitioners.

PCCs generally seek to recover the maximum costs they can. Costs awarded by the HPDT from April 2014 – December 2019 range from 2% to 61%.