

Part 3 – Complaints Management

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Overview

1. In accordance with the Legal Services Agency's (the Agency) priority goal of maintaining the delivery of core services and improving the quality of legal services, this document sets out the Agency's approach and processes for dealing with complaints about the conduct of a Listed Provider (Provider) when providing services¹.
2. This document is designed as a guide for Providers, complainants and Agency staff through the complaints process (process).
3. In accordance with general best practice principles and the Lawyers Conduct and Client Care Rules 2008 (Rules)², it is expected that all Providers who receive a complaint about their own services will attempt to resolve the complaint directly with the person concerned.
4. Complaints about Provider conduct may arise from a number of sources, including but not limited to complaints received from clients or other Providers, recommendations made as a result of Provider audits, observations or complaints raised by Agency staff, complaints raised by Judges, court staff or decisions of other bodies. In this document these are all referred to as 'complaints'.
5. In dealing with any complaint the Agency will conduct its processes in accordance with the principles of natural justice (fairness, transparency, consistency). The Agency will neutrally investigate complaints, seek to remedy any substantiated complaint, determine appropriate consequences, and manage all complaints in a timely manner.
6. Definitions of key terms used in this process can be found in [Appendix One - Definitions](#).

Principles

7. The Agency is committed to improving quality of services and will manage complaints in accordance with the following principles:
 - **Efficient and effective** – process is timely and thoroughly investigates all matters; has a flexible range of sanctions, remedies and guidance for listed Providers to prevent or minimise poor practice; and coordinates sufficiently with the various agencies responsible for regulating the conduct of Providers of legal services;
 - **Recognition of the multiple aims of the complaints process** – process redresses the complaints of legal aid clients and ensures that individual legal practitioners maintain the quality of legal services at a sufficiently high level;
 - **Independent, impartial and fair** – process is transparent, confidential (including considerations of privacy) and free from the appearance of bias, external influence, conflicts of interest or impropriety. Fairness includes ensuring that all parties to a complaint know what to expect during the complaints process, the provision of reasons for decisions, and giving participants in the process the opportunity to respond and seek review; and
 - **Open, accessible and accountable**- process is widely accessible to potential complainants, includes providing clear simple guidance on complainants' rights;

¹ Complaints relating to Agency staff are to be referred to their Manager and dealt with in accordance with Human Resources Policy Manual – Reward and Performance Management.

² Rule 3.8 provides that lawyers have a duty to ensure that there are procedures in their practice to deal with complaints promptly and fairly.

process must be open and accountable and allow participants and the public to assess whether the process works effectively. Reporting on complaints includes publication of details of activities, data about complaints made, time taken, remedies granted, levels of satisfaction achieved and action taken to improve the process.

Purpose

8. Under Section 92(a) of the Legal Services Act 2000 (the Act), one of the functions of the Agency is to 'administer schemes in as consistent, accountable, inexpensive, and efficient a manner as is consistent with the purpose of this Act'.
9. One of the ways the Agency seeks to implement this function is through the efficient and consistent management of complaints. The process enables the Agency to hold Providers to account when services provided are not consistent with the Agency's function (above) and to ensure Providers comply with their professional, legislative and the Agency's obligations.

Scope

10. The process covers complaints about Provider conduct when providing legal aid services. The Agency defines 'services' as those that are related to legal services provided within the legal aid and other schemes; and participation in the legal aid and related schemes.
11. These include obligations of a Provider as set out in the:
 - the Legal Services Act 2000 (Act) and its amendments;
 - their professional and other legislative obligations;
 - their Contract for Services (Contract), and
 - the Agency's policies and procedures.

Responsibilities of Agency Staff

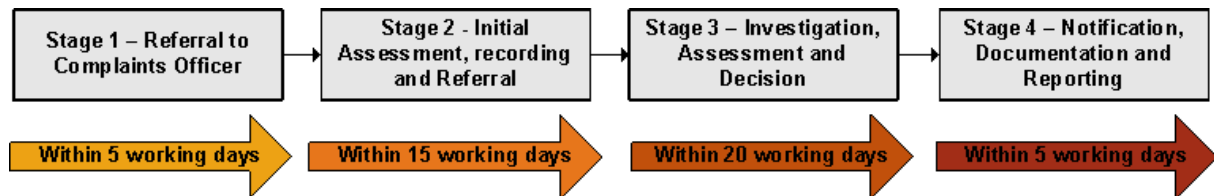
12. The process is overseen and managed by the Manager Provider Services (MPS) and the MPS approves recommended action where the complaint is of a serious or very serious nature. Both the Complaints Officer (CO) and Advisers investigate complaints. However where the complaint is of a more serious nature the complaint is referred to an Adviser for investigation.

General approach

13. There are four stages to the management of complaints, however not all complaints may progress to investigation stage and complaints may be resolved at any point in the management process.
 - Stage 1 – Referral to Complaints Officer
 - Stage 2 – Initial Assessment, Recording and Referral
 - Stage 3 – Investigation, Assessment and Decision
 - Stage 4 – Notification, Documentation and Reporting
14. For a detailed visual overview of the process see [Appendix Four – Complaints Management flowchart](#).

15. All complaints will be managed in accordance with the following timelines³:

- Agency staff will refer complaint to CO within 5 working days of receiving a complaint or the complaint being raised.
- A final decision will be made and/or action(s) will be taken and notified to the Provider within 9 weeks of receiving a complaint. This timeframe may however be extended where additional investigation is required or where the recommended action involves suspension or cancellation of listings.⁴



Management of Complaints

Stage 1 – Referral to Complaints Officer

16. Regardless of origin, all complaints are referred to the CO.
17. On receipt, the CO reviews and screens the complaint to determine whether there is an apparent breach of obligations; this may include initial discussions by telephone with the relevant parties, including Agency staff, Court staff, the complainant and the Provider.
18. Where there is no apparent breach of obligations, the complaint is recorded as dismissed and closed in the Provider Monitoring Register (PMR) and the complainant is informed.

Public Defence Service (PDS)

19. Where a Provider is Agency (PDS) staff, the CO will notify the Provider's manager.
20. Depending on the nature of the complaint, the Provider's manager may conduct an independent investigation in accordance with the Agency's Human Resources Policy and the Provider's employment contract.

Stage 2 – Initial Assessment, Recording and Referral

Initial Assessment

21. On receipt of a complaint the CO:
- records the complaint in the PMR;
 - where the complainant is a legal aid client, contacts the complainant to discuss the complaint and determine what remedies are being sought by the complainant;

³ In certain circumstances the Agency may have to work outside these standards e.g. when a complainant or Provider does not respond to the Agency's requests in the timeframe provided.

⁴ These timeframes only refer to the management of complaints and do not include where the decision results in recommendation for Suspension or Cancellation of listings, or other Agency action which may potentially require further time.

- seeks written consent from the complainant where the complaint is external, to disclose the complaint to the Provider, and on receipt provides a copy of the complaint to the Provider (see External complaints and Disclosure of Information below);
 - determines if the complaint is related to Agency (legislative or contractual) or the Provider's professional obligations;
 - assesses if the complaint is minor, serious or very serious and requires further investigation (see [Appendix Two – Types of Complaints](#));
 - assesses the risk posed to the Agency's legal aid and related schemes, and the legally aided person if the complaint is not resolved;
 - reviews the PMR and contacts relevant Agency staff to determine whether the Provider has a history of failing to comply with their obligations;
 - provides a copy of the complaint and/or details of the complaint to the Provider and seeks submissions from the Provider (within 10 working days)⁵, including advice on whether the alleged facts are correct, and:
 - if yes, asks them to provide an explanation and details of any mitigating factors; or
 - if no, asks them for a statement of their version of the facts.
22. All of the above points are to be considered prior to commencing an investigation into the complaint.
23. If the complaint is *minor*, the CO investigates the complaint.

External Complaints and disclosure of information

24. In accordance with Information Privacy Principle 11 in section 6 of the Privacy Act 1993 (Privacy Act) and the Official Information Act 1982 (OIA), the complainant's name and the details of their complaint should not be disclosed to the Provider without the complainant's written authorisation.
25. Where an external complaint is received orally, the CO may detail the external complaint in a file note and request disclosure in terms of written validation from the complainant.
26. Where an external complaint is received from:
- a legal aid client, the client has under the legal aid application authorised disclosure⁶ of personal information so the Agency can meet its responsibilities under the Act, therefore further authorisation will not be required; and
 - any other third party the CO will need to seek written authorisation from the complainant to disclose the complaint to the Provider.
27. Where the complainant is a third party to the matter and/or has expressly prohibited authorisation to disclose the complaint to the Provider, the CO can determine whether the Agency should proceed with an investigation.

⁵ If the Provider does not respond, a reminder letter will be sent. Where appropriate, the CO may telephone the Provider to request a response.

⁶ The Agency will collect or disclose personal information about you to meet its responsibilities under the Legal Services Act 2000, associated regulations and/or any other relevant statute or court order.

28. This will require an assessment in accordance with the exceptions provided for in the Privacy Act⁷ and OIA⁸, and consultation with the MPS.

Referrals of serious and very serious complaints

29. If the complaint is *serious*, the CO will assess whether to investigate or refer the complaint to an Adviser for investigation. The assessment and decision to refer is made in consultation with MPS and is based on the nature and complexity of the complaint.
30. If the complaint is *very serious*, the CO refers the complaint to an Adviser for investigation.
31. If the complaint is related to a Provider's professional obligations (including the Rules), the CO or Adviser will, in addition to its own investigation, refer the complaint to the New Zealand Law Society (NZLS).

Stage 3 – Investigation, assessment and decision

The Investigation process

32. The purpose of the investigation is to neutrally gather all relevant facts, information and documentary evidence about a complaint before making a decision.
33. An investigation into a Provider's conduct may not impact on the Agency's dealings with the Provider, however the Provider may no longer be assigned files depending on the nature and seriousness of the conduct in question, it may impact on applications for listing (or other related applications) until the investigation is complete.
34. The Agency may investigate multiple complaints relating to the same Provider at the same time.
35. Where appropriate and with the consent of the Provider, the MPS or Adviser may meet with the Provider to discuss the information currently available to the Agency⁹, for the Provider to respond and discuss the next steps.

Assessment of the complaint

36. In assessing the complaint, the CO or Adviser takes into consideration whether:
- the Provider confirms that the facts of the complaint are correct, whether the Provider gives a reasonable explanation, and any mitigating factors;
 - the Provider has taken steps to remedy the situation;
 - further information is required (from the complainant, Provider or Agency staff or external source) before the Agency can determine an appropriate course of action;
 - the Provider has been given an opportunity to respond to further information; and
 - a response has been received from the Provider.

⁷ Any decision to disclose will be made having regard to the nature and seriousness of the allegations made, and whether the Agency considers that to disclose personal information is necessary to either prevent, detect, or investigate criminal activity. Guidance is also available in the Agency's Corporate Policy.

⁸ This will involve a consideration of whether the grounds for withholding the information are outweighed by any countervailing public interest considerations favouring the disclosure of the information.

⁹ The Provider will receive the Agency's information 10 working days before the meeting.

37. Where a Provider does not respond to the Agency's requests for information or provides insufficient information, and there are no other mitigating circumstances, the Agency will issue a notice for failure to respond to the Agency's requests for information.

Making the decision

38. On completion of the assessment, a decision is made on whether the complaint is substantiated, and where substantiated the appropriate consequence. The CO or Adviser will:
- based on an assessment of the available information, determine if the complaint is substantiated and the appropriate consequence; and
 - where appropriate, issue a notice for breach of clause 4.5 of the Contract for Services for failure to respond to the Agency's requests for information.

Remedies for complainants who are legal aid clients

39. The Agency is committed to ensuring a range of options are available to complainants or the client including:
- re-assigning the legal aid matter¹⁰ where for example, the complaint is for a serious matter (this process is managed by the Grants Officers and may be requested by the Agency before the complaint is assessed or investigated as the assessment does not depend on the outcome of the complaint);
 - reconsideration involving an examination of the cost of the case where for example, the lawyer has claimed for more time than they actually spent on the case, or claimed more expenses (disbursements) than they actually used;
 - an admission of fault or an explanation or apology from the Provider;
 - resolving the dispute with the Provider about legal services, by improving the communication with the Provider or service provided by the Provider;
 - resolving the dispute about fees paid in addition to legal aid grants;
 - requesting an assessment of 'Request for non-recovery' under section 36A of the Act (this involves a separate assessment process)¹¹; and
 - requesting an assessment of "write off" of the legal aid grant by the Agency under section 37 of the Act (this involves a separate assessment process)¹².
40. More than one remedy may be applied in the particular case if the circumstances justify that course of action.

Consequences for substantiated complaints

41. For Providers, the consequences of substantiated complaints range from issuance of notices, notices with conditions, requests for repayment of payments for legal services, and powers exercisable under the Act (see [Appendix Three - Consequences of Substantiated Complaints](#)).

¹⁰ The re-assignment process is managed by the Grants Officer's and may be requested before the complaint is assessed or investigated as the assessment does not depend on the outcome of the complaint.

¹¹ The assessment of applications Request for non-recovery' under section 36A is managed jointly by the Grants and Debt Offices.

¹²The assessment of applications for write off's (closed files) under section 37 is managed by the Debt Office

42. The Agency will exercise objective judgment and apply a consistent approach, having regard to the type and severity of the breach. In this regard the Agency can issue a First, Second or Final Notice, and is not obligated to ensure that all or any of the three notices are issued to a Provider before the Agency may consider cancelling or suspending a Provider's listing/s. Decisions as to consequences are made in consultation with Agency staff as appropriate.
43. All notices will remain in place for a period of 12 months. This time period is recorded on the notice letters.

Minor Complaints

44. If the substantiated complaint is minor, and the complaint relates to compliance with Agency obligations, the Agency may issue a First Notice and note and close the complaint.

Serious and Very Serious Complaints

45. If the substantiated complaint is serious or very serious and the Provider has failed to comply with the Agency's, contractual, legislative or professional obligations, the Agency may do one or more of the following:
 - refer complaint including consequences to the NZLS (where complaint not referred at initial assessment);
 - reassign Legal Aid matter;
 - issue a First Notice (with or without Conditions);
 - Issue a Second Notice with Conditions;
 - Issue a Final Notice;
 - Issue Conditions on listings;
 - recommend a Special Audit; and
 - recommend Suspension/Cancellation.

Stage 4 – Notification, Documentation and Reporting

Notifying the Provider of the Agency's decision

46. On completion of the investigation, the Agency will inform the Provider:
 - whether the complaint was substantiated,
 - reasons for the decision
 - remedial action considered necessary
 - any conditions on listing.

Notifying the complainant, NZLS and Agency staff of the Agency's decision

47. On completion of the investigation, the Agency will inform the complainant, relevant Agency staff and NZLS (where appropriate) of whether the complaint was substantiated.
48. In most cases it is not necessary to release specific details of decisions. However if requested, any relevant and necessary details of the remedial action(s) taken (or to be taken) by the Agency can be provided to the complainant. The Adviser or CO must use

its discretion to judge what necessary and relevant information is and may require an assessment under the OIA 1982 and/or Privacy Act 1993.

49. Where further information is requested by the complainant and the complaint is not substantiated the Agency may outline the reasons for the decision.

Documentation and Reporting

50. The CO enters all complaints into the PMR, including the Agency's decision and action taken, for analysis, reporting and auditing.
51. For serious and very serious complaints, the Agency will record the assessment and recommended appropriate action in a memorandum to the MPS for approval.
52. A copy of all the information including all correspondence, recommendations, decisions and action taken relating to the complaint is kept on the Provider's file, and where appropriate the legal aid file.
53. The CO provides a summary of all complaints and action taken to the MPS on a weekly basis and as appropriate. The MPS reports substantiated complaints to the Agency's Audit and Risk Committee on a quarterly basis.
54. Reports regarding complaints may be published on the Agency website in an anonymous format. A trend analysis of the Agency's action on complaints about Providers may be reported in an anonymous format. The analysis will incorporate information sourced from the PMR.

Appendix One – Definitions

Agency concern	Where the Agency has concerns regarding a Provider's conduct, which may indicate that they have failed to comply with their legislative, contractual or professional obligations while providing legal Services.
Agency Manager	Manager Debt Management Group, Grants Regional Managers, Manager Provider Services, Manager Operations Support.
Authorisation	A complainant's written permission for the Agency to present their name and complaint to the Provider and disclose any information.
Agency Staff	A person employed by the Agency under an employment Contract of Service.
Contract for Services (Contract)	The agreement between the Agency and the Provider to supply legal Services. In accordance with the Listing Criteria, all Providers must hold a current Contract for Services with the Agency in order to provide services under the Legal Aid, Duty Solicitor, Police Detention Legal Assistance Schemes and any other approved schemes.
Complaint	Any expression of dissatisfaction with Services provided. This includes all complaints regardless of the origin which are categorised by the Agency as Agency concerns or external complaints. Refer to Appendix Two for specific examples of complaints that may fall within minor, serious and very serious categories.
External complaint	A grievance or allegation received from a source outside the Agency about a Provider's conduct, which may indicate that they have failed to comply with their obligations while providing Services.
Substantiated complaint	Where an investigation demonstrates that the Provider has failed to comply with their obligations while providing Services.
Notice	A letter that informs the Provider of their obligations and the Agency's expectations. It may also include actions to be taken and the possible consequences in this process.
Obligations	A Provider's obligations as outlined in the Act, the Contract, professional obligations and any relevant policies and procedures.
Provider Monitoring Register (PMR)	A central register where all complaints will be recorded. The PMR is a monitoring and reporting tool for the Agency.
Resolution	Where a satisfactory outcome is reached, which allows the Agency's and the legally aided person's interests to be protected, while also ensuring that the Provider's obligations have been met.
Services	May be those related to the provision of legally aided services and participation in the legal aid and related schemes

Appendix Two – Types of Complaints

Minor Complaints - examples of conduct the Agency considers as minor include but are not limited to:

- Administrative complaints such as not intentionally completing an Agency form incorrectly
- Genuine mistake by the Provider that has had no impact on the service provided
- Poor record keeping due to inexperience as a Provider
- Providers applying for legal aid after the proceedings have been completed (where no intention to de-fraud)

Serious Complaints - examples of conduct the Agency considers as serious include but are not limited to:

- Administrative complaints such as intentionally completing an Agency form incorrectly
- Behaviour that negatively impacts on the relationship with the Agency, Courts and Client – for example, behaviour that is rude, aggressive or abusive
- Behaviour that negatively impacts the integrity of the legal aid schemes, including failure to comply with obligations related to payment of taxes
- Duty solicitors claiming rostered hours while representing other clients at the same time
- Duty solicitors nominating colleagues in their firm or chambers as preferred lawyers
- Duty solicitors seeking nomination as preferred lawyer or telling clients that they will be their preferred lawyer
- Duty solicitors signing off early to pick up assignments
- Lead Providers not supervising secondary and non-lawyer Providers
- Provider conduct which has resulted in the transfer/reassignment of a legal aid file
- Providers accepting assignments with the intent to hand them over to a colleague in their firm or chambers
- Providers acting without/contrary to instructions or failing to carry out instructions
- Providers actively soliciting unrepresented defendants (either in the cells or court) who would normally be dealt with by the duty solicitor
- Providers approaching the client of another lawyer with the intention of seeking reassignment
- Providers behaving incompetently (outside & inside court)
- Providers being late for court when representing legal aid clients
- Providers breaching confidentiality
- Providers conspiring to pervert the course of justice
- Providers failing to arrange cover for their legal aid clients or legal aid assignments while on leave
- Providers failing to attend arranged scheduled pre-trial meetings with prosecuting counsel
- Providers failing to attend court on the given date of proceedings
- Providers failing to attend duty solicitor roster dates and not scheduling a replacement or contacting the supervisor in advance

- Providers failing to carry out instructions
- Providers failing to cross examine competently, adduce available evidence
- Providers failing to comply with Court deadlines in relation to filing of proceedings
- Providers failing to protect the Agency's interests in respect to charges in favour of the Agency including in relation to the proceeds of proceedings
- Providers failing to provide an invoice in the manner prescribed by the Agency
- Providers failing to return or transfer documents
- Providers failing to use interpreter
- Providers intoxicated or under the influence of drugs when appearing or seeking to appear
- Providers making unreasonable threats to withdraw from proceedings
- Providers misleading the court
- Providers not being available for PDLA work when rostered
- Providers not communicating or communicating with a client of another lawyer
- Providers not complying with contractual obligations including failing to respond to Agency requests for information
- Providers not providing advice on progress
- Providers obstructing or delaying proceedings
- Providers pressuring clients to change plea, plead guilty or settle
- Providers unable to attend their rostered duty solicitor date, not arranging a replacement or contacting the supervisor in advance
- Providers working on legal aid files or representing clients in court when not appropriately listed or contrary to the Lawyers and Conveyancers Act 2006

Very Serious Complaints - examples of conduct the Agency considers very serious include but are not limited to:

- allegations of other serious fraudulent behaviour, for example tampering with information supplied to the Agency, fabrication of clients' financial details, falsely signing forms, double and triple billing, misuse of a nominated Trust Account by the Provider
- allegations of Provider misconduct, for example police charges, inappropriate relationships with clients, perverting the course of justice, protracting proceedings
- Providers claiming or accepting private payments from their legal aid clients where not authorised by the Agency
- Providers claiming for excessive costs, billing of work not undertaken, improper claiming of expenses, flat fee billing of disbursements rather than in accordance with the Agency's disbursement policy
- Where a complaint is received from a Judge, Justice of the Peace or any other member of a judicial body
- Other matters that may result in suspension consideration under the Act, these can be found in - "Suspension Consideration and Review Process", for example:
 - They have significantly breached an obligation or have a history of breaching their obligations as outlined in Part 4 of the Act and/or;

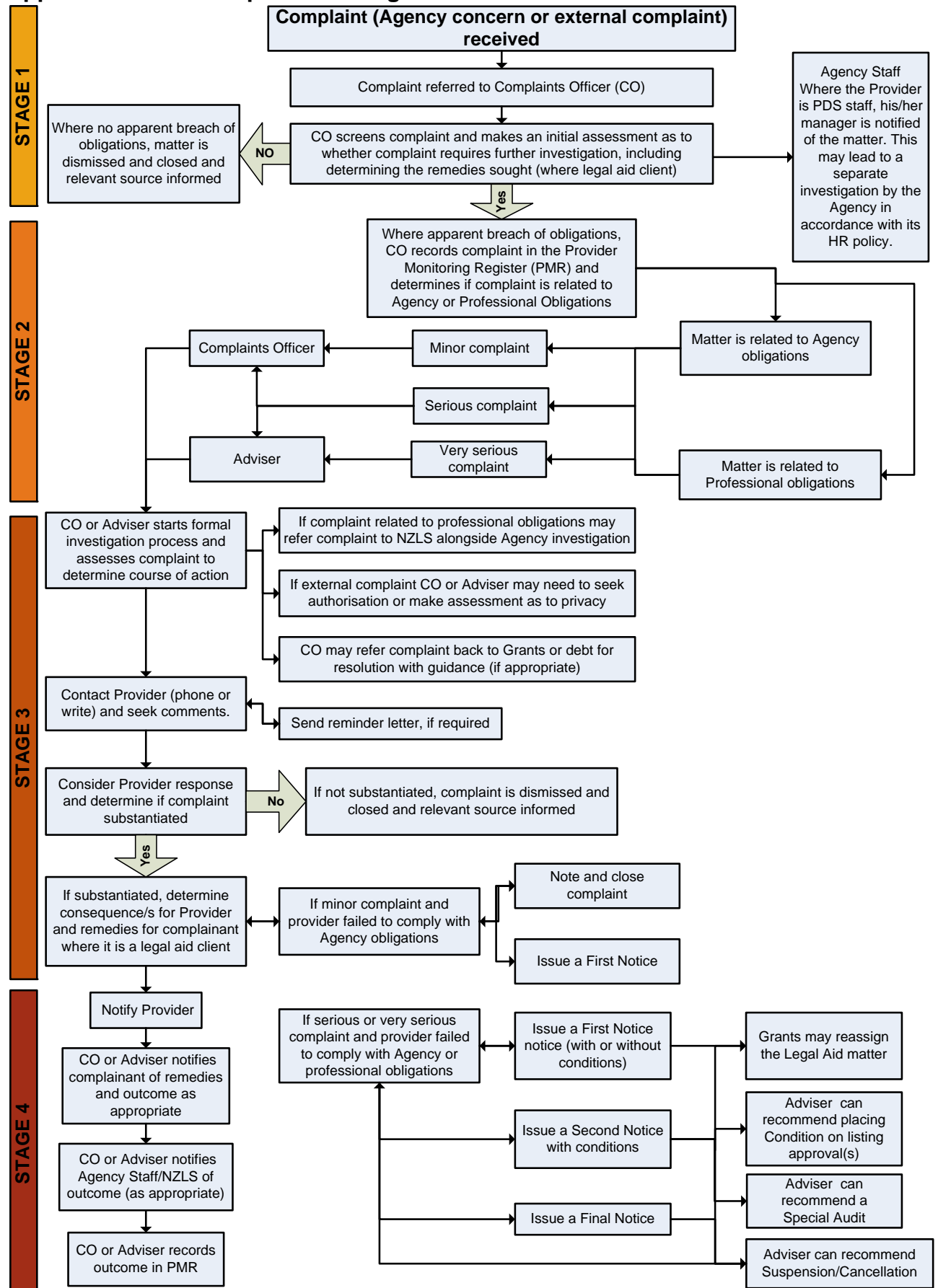
- Provider conduct or history of conduct puts the integrity and credibility of the legal aid schemes at risk or adversely affects the Provider's relationship with legal aid clients;
- An audit undertaken by the Agency of the Provider raises issues about the quality and value of the legally aided services being provided;
- Providers not having a practising certificate or had their practising certificate suspended, been struck off or declared bankrupt;
- Providers having been convicted of a crime where the nature of that conviction might adversely affect their relationship with aided persons, or the integrity and credibility of the legal aid schemes. Examples include, but are not restricted to fraud, assault, perjury and bribery, dishonesty; and
- Providers having had a complaint upheld by the NZLS which is a risk to the integrity and credibility of the Agency's schemes or which contravenes the Agency's standards.

Appendix Three - Consequences of Substantiated Complaints

Consequences	Considerations	Agency action
Note and close	<ul style="list-style-type: none"> Provider has for the first time failed to comply with Agency obligations and/or it is a minor administrative complaint that they have resolved 	<ul style="list-style-type: none"> noted and closed and relevant parties advised
First Notice (with or without conditions)	<ul style="list-style-type: none"> Provider has failed to comply with Agency obligations (first time) Provider has continued to fail to respond to Agency correspondence in respect of the complaint Conditions where Provider has failed to comply with Agency obligations and the complaint is serious - assessment has determined that the complaint requires further action 	<ul style="list-style-type: none"> The notice will contain details of the Provider's failure to comply with their obligations, a statement of the Agency's expectations, and it may request that immediate remedial action be taken a condition such as supervision, completion of training courses, submission of timesheets with invoices etc may be recommended on the Provider's listing approval(s)
Second notice with conditions	<ul style="list-style-type: none"> Provider has failed to comply with Agency or Professional obligations and the complaint is serious or very serious Provider has failed to comply with their obligations again after receiving a first notice or has not complied with the condition of their first notice in the required timeframe 	<ul style="list-style-type: none"> the notice will contain details of the Provider's failure to comply with their obligations; a statement of the Agency's expectations, possible consequences for not meeting conditions and it may request that immediate remedial action be taken a copy of the First Notice will be enclosed
Final Notice	<ul style="list-style-type: none"> Provider has not remedied a failure and has continued to fail to comply with their obligations Provider has failed to comply with Agency or Professional obligations and the complaint is serious or very serious 	<ul style="list-style-type: none"> A Provider may be issued with a Final Notice The notice will state clearly that it is a final notice and that the Provider is expected to correct their conduct. They will also be informed that the Agency will refer the complaint to Suspension/Cancellation consideration if they fail to do so. Copies of the First and Second Notices will be enclosed A Provider may be issued with two notices prior to a final notice being issued. The notices do not have to apply to the same

		obligation but need to state whether they are statutory, procedural (or contractual) or breaches of their professional obligations.
Other action the Agency may undertake under the Act in addition to above:		
Refer complaint to NZLS	<ul style="list-style-type: none"> The Agency may refer the matter to the NZLS (at any stage of the complaints process) 	
Reassign Legal Aid file/s	<ul style="list-style-type: none"> The Agency can reassign legal aid file/s to another Provider/s in accordance with the Part 13 of the Provider Manual 	
Conditions on listings	<ul style="list-style-type: none"> Impose condition/s on the Provider's listing approval(s) under s69(2) of the Act 	
Special Audit	<ul style="list-style-type: none"> Recommend the Agency undertake a special audit of the Provider under s78 of the Act 	
Suspension or Cancellation	<ul style="list-style-type: none"> Where the complaint is serious or very serious, the Agency can recommend Suspension or Cancellation under s 72A and s73 of the Act and in accordance with the Suspension/Cancellation Consideration and Review Process 	

Appendix Four – Complaints Management flowchart



* Note: Although the Agency can issue a First, Second or Final Notice, the Agency is not obligated to ensure that all three notices are issued to a Provider before the Agency will consider cancelling or suspending a Provider's listing/s.