



MINISTRY OF  
**JUSTICE**  
*Tāhū o te Ture*

# Part 3 – Complaints Management

Operational Policy

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# Overview of Complaints Management

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## Overview

### About this part

This part of the Provider Manual outlines the Ministry of Justice's (the Ministry's) Legal Aid complaints management process (complaints process) for providers of legal aid and specified legal services.

### Glossary of terms

A glossary of the key terms used in this part can be found in Appendix 1 – Glossary.

### References

References to 'the Act', 'regulations' or legislative provisions refer to the Legal Services Act 2011 and Legal Services (Quality Assurance) Regulations 2011. Any other Act mentioned is named in full.

### In this part

This part contains the following chapters and appendices

Chapter	Title
1	<b>The Complaints Process</b>
2	<b>Triage Process</b>
3	<b>Quick Action Process</b>
4	<b>Investigation and Assessment</b>
4	<b>Complaint Outcomes</b>
5	<b>Complaints about PDS Lawyers</b>
Appendix 1	<b>Glossary</b>
Appendix 2	<b>Types of Complaints</b>

# Chapter 1 – The Complaints Process

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## Overview

### About this chapter

This chapter outlines the:

- purpose and scope of the complaints process
- principles guiding the complaints process, and
- stages that make up the complaints process.

### Legal references

This chapter contains the following references to the Legal Services Act 2011:

Section	Title
3	Purpose of the Act
68	Functions of the Secretary
79	Performance Review Committee
91	Secretary may audit providers
101	Interim restrictions that may be imposed by the Secretary
102	Sanctions that may be imposed by the Secretary
109	Disclosure of privileged communications under section 92 or 96

### Purpose of the Act

The purpose of the Act is to promote access to justice by establishing a system that:

- provides legal services to people of insufficient means, and
- delivers those services in the most effective and efficient manner.

In accordance with the Act, one of the functions of the Secretary for Justice (the Secretary) is to establish, maintain and purchase high quality legal services.

**Reference:** Sections 3 and 68 of the Act.

### Purpose of the complaints process

One way that the Ministry delivers the above purpose is through efficient and effective management of complaints.

The complaints process enables the Ministry to ensure that providers comply with their obligations in providing services under the Act and take appropriate steps if they are not.

### Scope of the complaints process

The complaints process refers to complaints about provider conduct when providing legal aid and specified legal services. This includes provider obligations set out in the:

- Act and Regulations
- provider's professional obligations and other legislative obligations
- provider's contract and the practice standards, and
- Ministry's policies and procedures.

### What is a complaint?

A complaint is any expression of dissatisfaction with the legal aid or specified legal services provided. This includes all complaints regardless of their origin. Complaints are categorised by the Ministry as Ministry concerns or external complaints. See [Appendix 2](#) for specific examples of complaints that may fall within serious and very serious categories.

A *Ministry concern* is where the Ministry has concerns regarding a provider's conduct, which may indicate that the provider has failed to comply with legislative, contractual or professional obligations or practice standards while providing legal aid or specified legal services.

An *external complaint* is a grievance or allegation received from a source outside the Ministry about a provider's conduct, which may indicate that the provider has failed to comply with their obligations while providing legal aid or specified legal services.

## Guiding principles

### Introduction

This part sets out the principles that guide the Ministry's management of the complaints process.

### Natural justice

The Ministry will conduct its processes in accordance with the principles of natural justice (fairness, transparency and consistency).

### Efficient and effective

The complaints process:

- is timely
- thoroughly investigates all matters
- ensures complainants are informed of progress and outcomes (except sanctions imposed on the provider)
- has a flexible range of sanctions, remedies and guidance, and
- coordinates sufficiently with the various agencies responsible for regulating the conduct of providers.

### **Recognition of multiple aims**

The complaints process:

- redresses complaints of legal aid participants where possible and/or appropriate, and
- ensures that individual legal aid practitioners maintain the quality of legal aid and specified legal services at a sufficiently high level.

### **Independent, impartial and fair**

The complaints process is:

- transparent
- fair
- confidential (including considerations of privacy), and
- free from:
  - bias
  - external influence
  - conflicts of interest, or
  - impropriety.

**Note:** Fairness includes:

- ensuring that all parties to a complaint know what to expect during the complaints process
- providing reasons for decisions, and
- ensuring that all participants in the process are given the opportunity to respond.

### **Open, accessible and accountable**

The complaints process:

- is easily accessible to potential complainants
- provides clear and simple guidance on complainants' rights
- is open and accountable, and
- allows participants and the public to assess whether the process works effectively.

Reporting on complaints includes the publication of details of activities and data concerning:

- the source of the complaint
- a brief description of the complaint
- the time taken
- whether the complaint was substantiated, and
- the outcome of the investigation and the reasons for the decision.

# The Ministry's approach

## Introduction

This part outlines the Ministry's approach to complaints about the conduct of approved providers.

## Expectation of providers to refer unresolved complaints

Providers who receive a complaint about their own services are expected in the first instance to attempt to resolve the complaint directly with the person concerned.

Where the provider receives a complaint about their provision of legal aid or specified legal services which remains unresolved for five days from the date of receipt, he or she must provide details of the complaint (including a copy) to the Ministry within 15 days of the initial receipt of the complaint.

If the complainant is a third party (i.e. not a legal aid participant), the provider should seek the consent of the complainant prior to undertaking this obligation.

## Complaints to the Ministry

The Ministry must seek the complainant's agreement before referring the complaint to the provider, but may investigate the complaint even where consent is not obtained (see [Authorisations for Disclosure of Information](#) in Chapter 2.)

Where the Ministry becomes aware of a complaint and notifies the provider, the Ministry expects that the provider will promptly respond to the complaint. The timeframes are detailed [below](#).

## References:

- Lawyers and Conveyancers Act (Lawyers: Conduct and Participant Care) Rules 2008, rule 8.4
- Legal Aid Provider Contract
- Privacy Act 2020, section 22
- Official Information Act 1982

## Complaint sources

Complaints about provider conduct may arise from a number of sources, including the following:

- participants or other providers
- findings and recommendations made as a result of provider audits
- observations or complaints raised by Ministry staff ('Ministry concerns')
- complaints raised by judges or court staff, or
- decisions of other bodies, including determinations of Lawyers Standards Committees.

## Complaints about Public Defence Service (PDS) lawyers

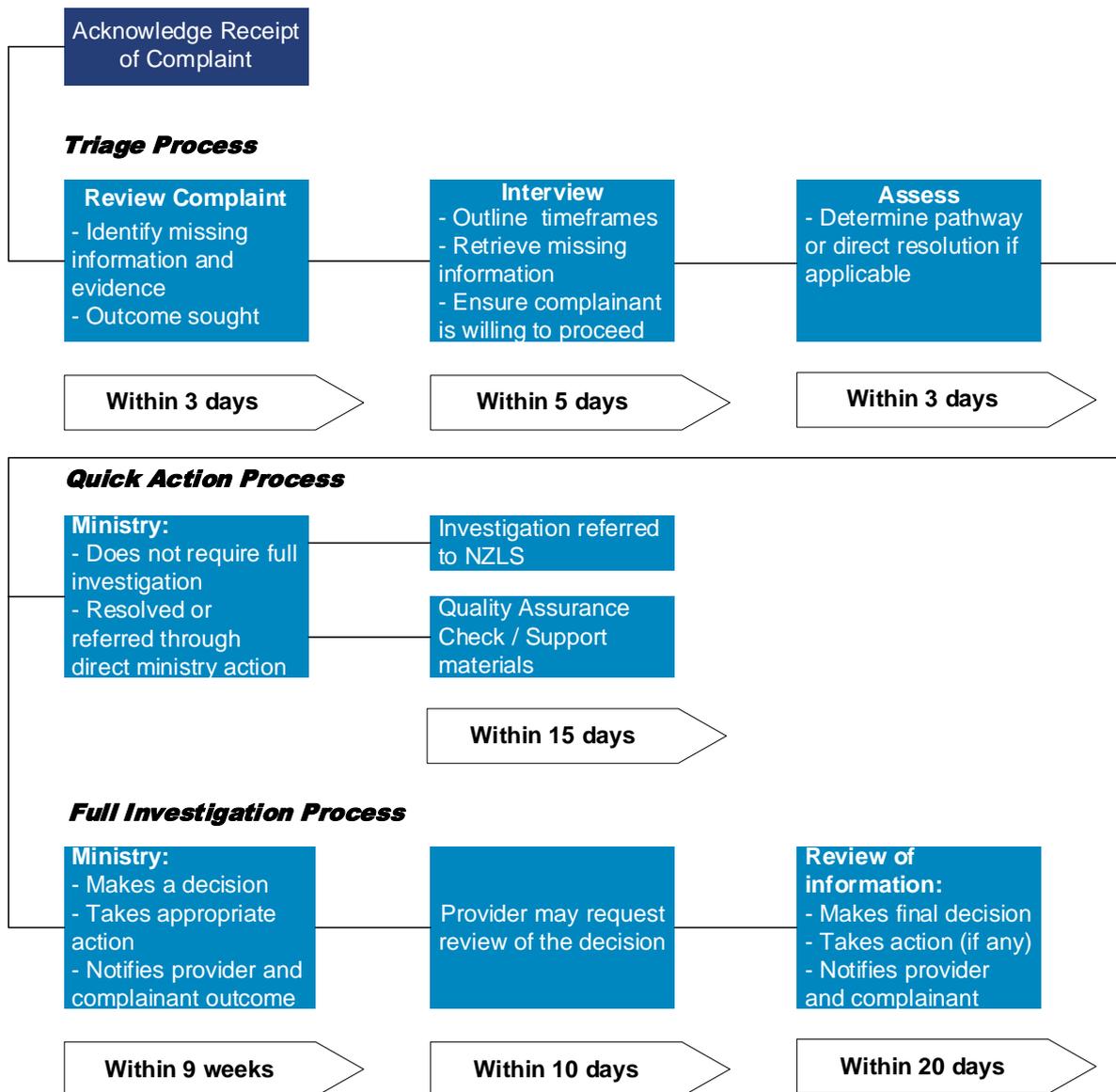
For details on how complaints about Public Defence Service (PDS) lawyers are investigated see chapter 6 – [Complaints about PDS Lawyers](#).

## Complaints management timeframes

The Ministry's guideline timeframes for managing complaints are shown in the table below.

Timeframe	Action(s) taken
Within three working days of the Ministry staff receiving the complaint.	Ministry staff acknowledge receipt of the complaint to the complainant
Within eleven working days of the Complaints Investigator (CI) receiving the complaint.	Triage process is complete and complaint path is determined.
Within 15 working days of the CI processing as quick action.	CI notifies the provider of the complainant and finalises the complaint.
Within 5 working days if full investigation.	CI notifies the provider of the complaint and seeks submissions.
Within 10 working days of the provider receiving notice of the complaint.	Provider responds to the complaint.
Within nine weeks of the CI receiving the complaint. <b>Note:</b> This timeframe may be extended if additional investigation is required, or the recommended action involves cancellation of a provider's approval.	<ul style="list-style-type: none"> <li>• A decision is made</li> <li>• any appropriate action is taken</li> <li>• the provider is notified</li> <li>• the complainant is notified, and</li> <li>• the provider is advised of the opportunity to request a review of the decision.</li> </ul>
After 10 working days of CI notifying the provider of the decision.	If a review is not requested, the complainant (if any) is advised of the decision and the reasons for the decision. The complainant will be advised of any remedial actions that directly affect the complainant such as reversal of fees claimed but will not be advised of any sanctions imposed on the provider.
Within 10 working days of Provider receiving the decision.	Provider may request a review of the decision and provide submissions.
Within 20 working days of Ministry receiving the request for a review.	<ul style="list-style-type: none"> <li>• The decision is referred to another Advisor for review</li> <li>• a decision is made</li> <li>• any appropriate action is taken</li> <li>• the provider is notified of the final decision and reasons for the final decision</li> <li>• the provider is notified of the options available, and</li> <li>• the complainant (if any) is advised of the decision and reasons for the decision. The complainant will be advised of any remedial actions that directly affect the complainant, such as reversal of fees claimed, but will not be advised of any sanctions imposed on the provider.</li> </ul>

The following diagrams illustrate the above timeframes:



# Chapter 2 –Triage Process

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## About this chapter

This chapter describes:

- the triage process once a complaint has been received.

## Triage of complaint

### Receipt of complaint

Once a complaint has been received, an email or letter is sent immediately to the complainant acknowledging receipt of the complaint within three working days.

### Triage process

The triage process aims to establish which complaints can be resolved early and which issues are more complex and require a full investigation.



### Review complaint

Step one of the triage process is the initial review of the information that has been provided with the complaint. The person conducting the triage is to work through a variety of questions to capture a high-level picture of the complaint.

There will often be questions arising from the initial triage. It may not be clear what outcome the complainant is seeking or exactly what they are alleging has occurred. There may also be questions about what evidence the complainant has to support their allegations.

An example of the questions the person completing step one will need to consider in their initial review are demonstrated in the table below.

## Step One

### The review may consider:

- Has consent to release the complaint been received?
- What information is provided with the complaint?
- What outcome does the complainant want?
- Is the outcome the complainant wants a possible outcome?
- Has any evidence been provided in support of the complaint?
- Would other information does the CI need?

If consent to release the complaint to the provider has not been provided, it needs to be obtained from the complainant in step two. If consent cannot be obtained over the phone, it should be asked for in writing.

### Phone interview

From completion of step one, it may be clearer what the complainant wants or aims to achieve from this complaint.

Step two of the triage process is a phone interview where appropriate. This step will be used in most circumstances and will be particularly useful when the complainant has previously been a legal aid participant.

This step allows the Ministry to manage expectations, discuss desired outcomes and clearly set out the complaints process. Useful information can also be obtained.

If a complaint is received from a third party, a phone interview can assist with explaining third party consent and legal privilege to the complainant. A second phone call will also be necessary to ensure the client provides consent for the third party to continue with the complaint on their behalf.

**Note:** In some instances, a phone call will not be necessary, for example if a complaint came directly from the judiciary or if the complaint has adequate information to make an immediate assessment.

## Step Two

### The phone interview aims to:

- Obtain consent to provide the complaint to the provider if not already obtained
- manage expectations
- if third party complaint, establish that the complaint is on client's behalf
- highlight policy, processes and timeframes; and
- obtain missing information.

### Triage assessment

Step three is where the information gained in step one and two is assessed.

The assessor determines if a complaint can be resolved early or if not, which category the complaint falls into based on the potential outcome of the investigation.

**Note:** If the complainant refuses to provide consent to release the complaint in step two, in most cases the complaint will not proceed. This will need to be explained to the complainant and the complaint will be closed. If the CI believes that the matter is so serious that release may be necessary against the complainants wishes, legal advice should be sought.

Some examples of what the assessor may consider are demonstrated in the table below.

Step three	
If the complaint:	Then:
<ul style="list-style-type: none"> <li>is of such a nature that NZLS is better placed to conduct the investigation.</li> </ul>	quick action process (see chapter 3).
<ul style="list-style-type: none"> <li>can be resolved early without the need for a full investigation.</li> </ul>	quick action process (see chapter 3).
<ul style="list-style-type: none"> <li>is classified as a serious or very serious complaint (and is not of a nature that the NZLS is better placed to investigate).</li> </ul>	full investigation process (see chapter 4).
<ul style="list-style-type: none"> <li>is a substantiated NZLS decision.</li> </ul>	progress to sanctioning.

#### Next steps

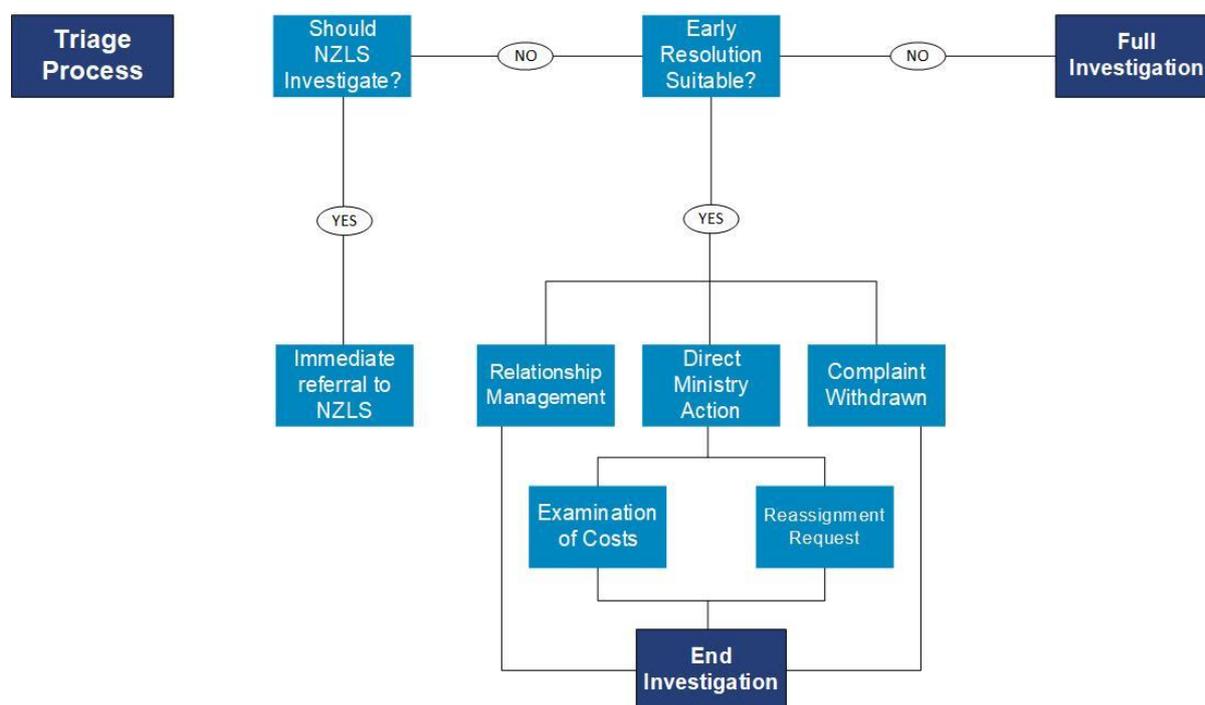
- For complaints that should proceed down the 'quick action' process, please refer to Chapter 3.
- For complaints that should proceed down the 'full investigation' process, please refer to Chapter 4.

# Chapter 3 – Quick Action

## About this chapter

This chapter describes:

- when a complaint should be referred to NZLS and,
- how to manage complaints that can be resolved early.



## Immediate NZLS referral

### Introduction

This part describes when a complaint should be referred to the NZLS and the process for doing so.

### What complaints should be referred to the NZLS

If a complaint is serious or very serious and relates to the provider's duties and obligations as a lawyer generally (as opposed to a matter that is specific to legal aid), it should be referred to the NZLS. For example, if a legally aided client complains that the provider has failed to follow their instructions, that is something that goes to the provider's obligations as a lawyer (even though it is a legal aid case) so should be referred to the NZLS.

An example of a serious or very serious complaint that should not be referred to the NZLS is a provider's repeated failure to comply with Ministry processes. That is a matter that the Ministry will investigate itself.

**Note:** A single complaint may contain elements that should be referred to the NZLS and elements that should be investigated by the Ministry. In this circumstance, the usual practice is that the Ministry's investigation will be deferred pending the outcome of the NZLS complaint, unless the matters to be investigated by the Ministry can appropriately proceed in isolation.

### **New Zealand Law Society referral**

The CI will contact the NZLS within five working days of receipt of the complaint to determine whether the matter is something that falls within the NZLS's complaint jurisdiction. If it is, the CI will refer the complaint. If it isn't, the CI will determine whether to progress the complaint through the Ministry's full investigation process in Chapter 4.

If the CI refers to the complaint all parties will be notified of this action within five working days.

When the Ministry refers a complaint to the NZLS, the Ministry will take on the role of a complainant so that the NZLS can keep the Ministry informed of the progress of its investigation.

**Reference:** Lawyers and Conveyancers Act (Lawyers: Conduct and Participant Care) Rules 2008

## **Early Resolution**

### **Introduction**

This part describes how a complaint can be resolved early.

### **General resolution**

Early resolution of complaints is recommended preferably through a conciliation/relationship-based approach. If appropriate, the Ministry will coordinate communication between the parties to encourage early resolution.

This approach might be appropriate in instances where an ongoing relationship needs to be maintained, or if the usage of a conciliation/relationship-based approach might lead to a more equitable and mutually beneficial outcome for the parties to the dispute.

### **Early resolution process**

It may also become clear from the triage process that the complainant desires a specific outcome. In some instances, the complainant may be seeking an outcome that is not within the possible outcomes of the complaints process (for example having their conviction quashed). This should be communicated to the complainant in step two of the triage. The complainant may not wish to continue with their complaint as a result.

## Early Resolution

<ul style="list-style-type: none"> <li>• Can frontline action satisfy the complainant?</li> </ul>	If yes, the appropriate staff member should be contacted to assist with the request.
<ul style="list-style-type: none"> <li>• Does the complainant understand the policy and processes of a complaints investigation?</li> </ul>	Managing the expectations of possible outcomes may result in the complainant not wishing to proceed.
<ul style="list-style-type: none"> <li>• If complaint is about fees on a file, would the complainant be satisfied with a section 90 examination of costs?</li> </ul>	If yes, contact legal aid grants to complete a section 90 examination of cost of services.
<ul style="list-style-type: none"> <li>• If the complaint has completed a section 90 examination of costs and is still unhappy, would the complainant be satisfied with referral for a limited audit?</li> </ul>	If yes, refer provider for automatic limited audit.
<ul style="list-style-type: none"> <li>• Would the complainant be satisfied with an apology?</li> </ul>	If yes, the CI contacts the legal aid provider to discuss the complaint and proceed with a conciliation/relationship-based result.

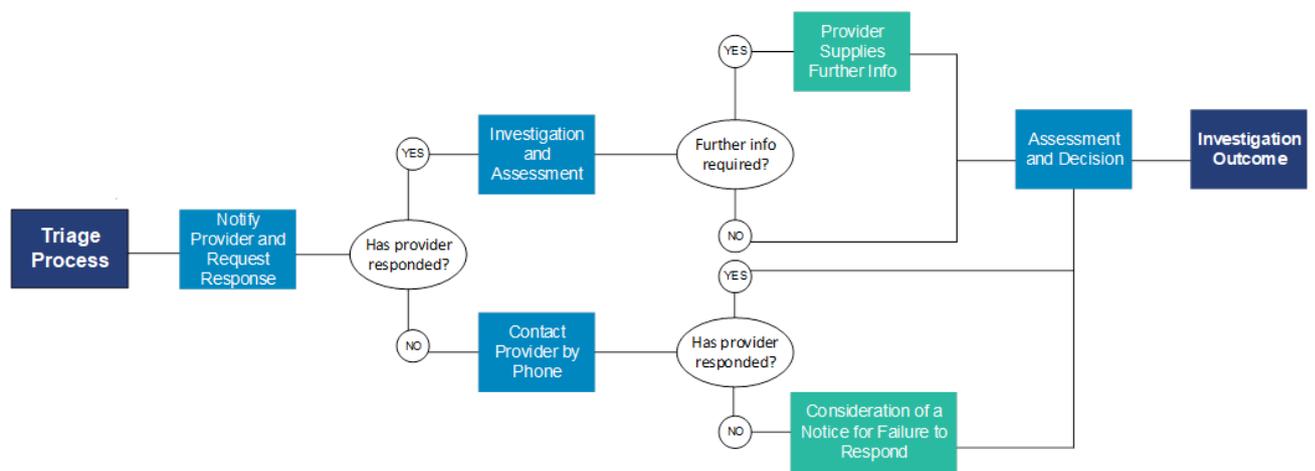
If the complaint is serious or very serious, the CI can choose to proceed to an investigation even if the complainant wants early resolution.

# Chapter 4 – Full Investigation

## Overview

### Process

The diagram below illustrates the investigation and assessment stage of the complaints process.



## Authorisations for disclosure of information

### Introduction

This part outlines the authorisations governing disclosure of information.

The Ministry is required to obtain authorisation to disclose information about complaints from participants. If a third party has made the complaint, consent from the legal aid participant that the file is about must be obtained.

In addition, the provider is obligated to respond under their professional obligations without further disclosure.

**Note:** The Ministry may collect or disclose personal information about participants to meet its responsibilities under the Act, associated regulations, or any other relevant statute or court order.

There are three different types of authorisations for disclosure of information that may be required from complainants other than legal aid participants.

If a complaint is received...	then the authorisation required is...
orally	the CI: <ul style="list-style-type: none"> <li>• details the complaint in a file note, and</li> <li>• requests disclosure in the form of a written validation from the complainant if they are not a legally aided participant or Ministry staff.</li> </ul>
from a third party	the CI requires written authorisation from the complainant to disclose information about the complainant to the provider unless they are Ministry staff.  <b>Note:</b> No participant file details will be disclosed to a complainant who is a third party.
From a third party representing a legal aid participant	The CI requires the legal aid participant's written consent authorising the third party to speak on their behalf.  <b>Note:</b> This type of complaint may involve disclosure of participant file details to the third party.

### Ministry may proceed without authorisation

Where a complainant does not provide authorisation for disclosure, the Ministry may still proceed with a complaint investigation and release information. To do so, the Ministry has to assess whether the public interest in releasing the information outweighs any privacy concerns of the complainant.

Decisions to investigate a complaint without authorisation for disclosure from the complainant are approved by the Manager, Legal Aid Provider.

#### References:

Privacy Act 1993, section 6

Official Information Act 1982

### Complainant details

Where the complaint is external, the complainant's name and the details of their complaint should not be disclosed to the provider without the complainant's written authorisation.

#### References:

Privacy Act 1993, section 6

Official Information Act 1982

Lawyers and Conveyancers Act (Lawyers: Conduct and Participant Care) Rules 2008, clause 8.4

### Complainants representing legal aid participants

If an external complaint is made on behalf of a legal aid participant (for example, by a relative), they must have authorisation from the legal aid participant to act as the legal aid participant's representative.

### New Zealand Law Society referral

On completion of the investigation or earlier (depending on the nature of the complaint), the CI or Advisor may refer the complaint to the New Zealand Law Society (NZLS).

If a received complaint raises serious concerns about a lawyer's competency and the quality of service provided to participants, the CI will contact the NZLS within five working days of receipt of complaint.

Substantiated complaints that are serious or very serious may be referred to the NZLS, however referral of a complaint depends on the seriousness of the complaint, nature of the complaint and history of the provider.

When the Ministry refers a complaint to the NZLS, the Ministry will take on the role of a complainant so that the NZLS can keep the Ministry informed of the progress of its investigation.

Referral of a complaint is independent from any Ministry investigation.

**Reference:** Lawyers and Conveyancers Act (Lawyers: Conduct and Participant Care) Rules 2008

## Investigation of a Complaint

### Introduction

This part describes how a complaint is investigated.

### Purpose

The purpose of the investigation is to neutrally gather all relevant information about a complaint.

In carrying out an investigation, the CI may request supporting documents or information in any other form from any relevant source.

### Approach

Decisions on complaints are made on the balance of probabilities (i.e. whether, on all the evidence, it is more likely than not that the act or omission complained about occurred). This is a lower threshold than the criminal standard of beyond reasonable doubt.

### Potential impact on the provider

An investigation into a provider's conduct does not impact on the Ministry's dealings (including any rights or obligations) with the provider while the investigation is ongoing, unless the Secretary has referred the matter to the Performance Review Committee. Where this has occurred, the Secretary may impose interim restrictions.

**Reference:** Section 101 of the Act

### Multiple complaints

The Ministry may investigate multiple complaints relating to the same provider at the same time.

### Meeting to discuss

In exceptional circumstances and with the consent of the provider, the Manager Legal Aid Providers or the Manager, Legal Aid Services may meet with the provider.

The purpose of this meeting is to discuss the information currently available to the Ministry, for the provider to respond and to discuss the next steps. Minutes will be taken at the meeting and next steps agreed upon.

# Assessment of a complaint

## Introduction

This part describes how a complaint is assessed.

## Considerations

In assessing the complaint, the CI or Advisor takes into consideration whether:

- a response has been received from the provider
- the provider:
  - confirms that the facts of the complaint are correct
  - gives a reasonable explanation, or
  - outlines mitigating factors
- the provider has taken steps to remedy the situation and avoid the same issue arising again
- any further information is required (from the complainant, provider or Ministry staff or external source) before the Ministry can make a decision on the complaint.

## Assessing the evidence

When assessing the evidence, a CI takes into account its credibility and cogency. Credibility is how reliable the evidence is. Cogency is how relevant the evidence is to determine the matter at hand.

An example of this is CCTV evidence. This is likely to be very credible evidence, but its cogency depends on whether it shows what happened.

## Opportunity to respond to further information

Natural justice requires that a provider be provided with any material new information that comes to light during the investigation and the opportunity to respond.

## Failure to respond

Where a provider does not respond to the Ministry's requests for information or provides insufficient information, and there are no other mitigating circumstances, the Ministry will proceed with the assessment based on the available information.

If a provider fails to respond or provide information requested by the Ministry, the Ministry may consider issuing a notice for failure to respond when determining appropriate complaint outcomes.

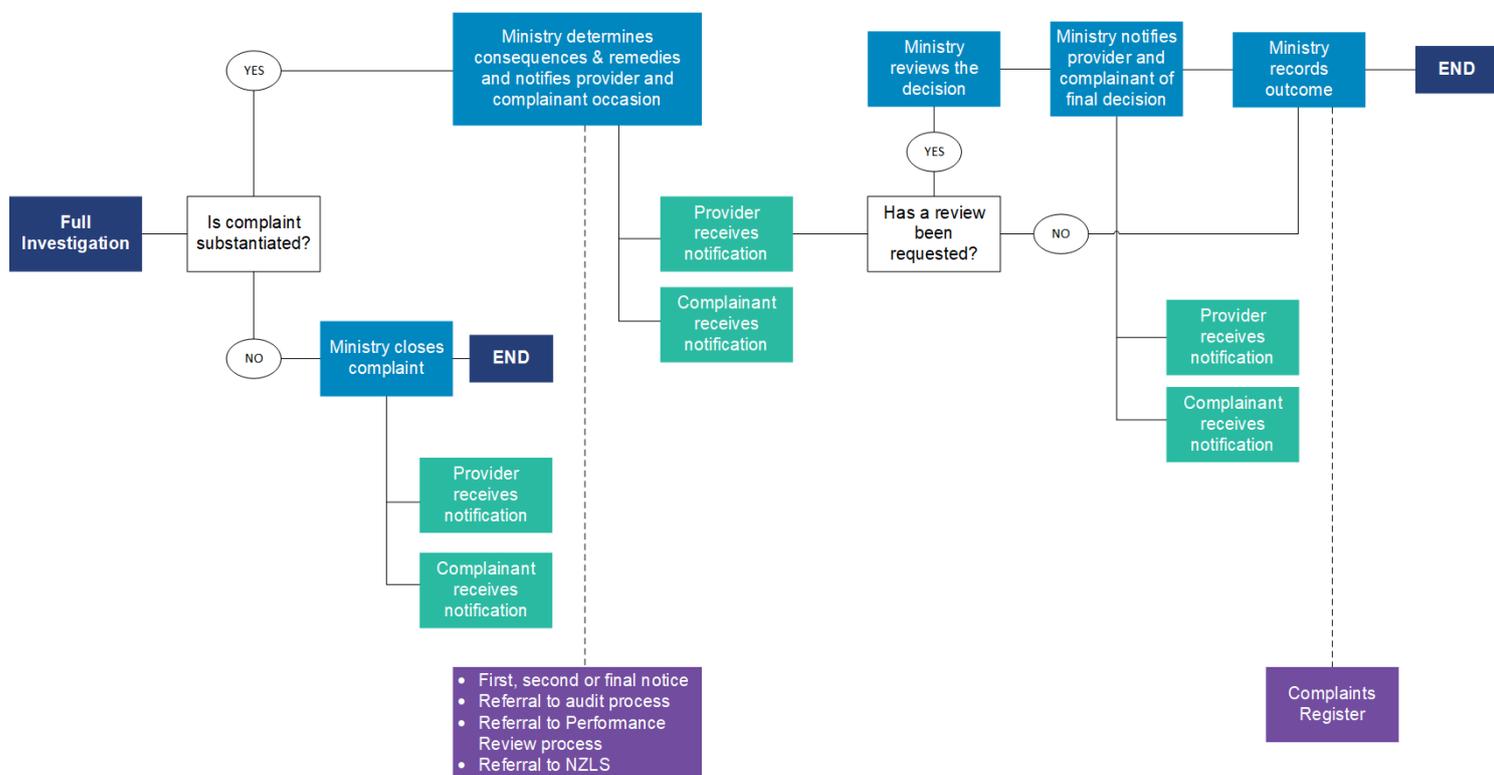
**Reference:** Legal Aid Provider Contract

# Chapter 5 – Complaint Outcomes

## Overview

### Process

The diagram below shows the final stage of the complaints process.



### About this chapter

This chapter describes:

- the consequences of substantiated complaints
- the various remedies for complainants
- notifications sent to the provider and complainant
- an opportunity to request a review, and
- documentation and reporting by the Ministry.

## Legal reference

This chapter contains the following reference to the Legal Services Act 2011:

Section	Title
42	Commissioner may decide not to recover debt in certain circumstances

# Consequences for providers

## Introduction

This part describes the possible consequences for the provider when a complaint is substantiated.

## Consequences

The consequences of substantiated complaints may include:

- issue of a first, second or final notice
- recommendation to the Legal Services Commissioner to reassign the legal aid matter to another provider
- repayment of payments for legal services
- quality assurance checks under section 88 of the Act
- referral for an audit under section 91 of the Act
- powers exercisable under the Act or contract
- referral to the Performance Review Committee under section 79 of the Act and, where appropriate:
  - placement of a hold on payments to be made to the provider that relate to the matter being investigated under section 101 of the Act, and
  - other interim restrictions under section 101 of the Act.

## Factors impacting outcome

In deciding on the appropriate regulatory outcome for a substantiated complaint, the CI will consider a number of factors in making their decision. These will include:

- the nature and seriousness of the conduct
- the extent of the impact on the legally aided person, and
- any previous record of similar/identical conduct by the legal aid provider.

An identified pattern of concerning behaviour and non-compliance may be reflected in a more stringent outcome for the provider.

## The Ministry's obligations

The Ministry is obliged to exercise objective judgment and apply a consistent approach, appropriate to the nature and seriousness of the conduct.

## Notices

The Ministry can issue a first, second or final notice. The Ministry is not obligated to ensure that notices are issued in sequence or that all or any or all of the three notices are issued prior to the Ministry is considering cancellation of a provider's approval or any other sanction.

Notices are issued based on a number of factors, including but not limited to the type of provider, type of approval, severity of the breach of conduct and previous conduct.

**Note:** Decisions about consequences are made in consultation with Ministry staff as appropriate.

## Serious complaints

If the substantiated complaint is serious, and the complaint relates to compliance with Ministry obligations, the Ministry may issue a notice and/or note and close the complaint.

The Ministry will take into consideration the seriousness of the complaint, nature of the complaint and history of the provider.

Where the provider has received multiple complaints, the Ministry may consider other appropriate action, depending on the nature of the complaints.

## Very serious complaints

If the substantiated complaint is very serious and the provider has failed to comply with the Ministry's contractual (including practice standards), legislative or professional obligations, the Ministry may refer the provider for an audit or special audit, or to the Performance Review Committee (see [Part 4 – Cancellation of Approvals](#))

**Note:** Where the concerns are very serious, and relate to the provider's obligations as a lawyer, a notice may be issued, and the Ministry may refer the complaint to the NZLS.

Where concerns are referred to the Performance Review Committee, the Secretary for Justice or delegated authority can impose interim restrictions under the Act.

## New Zealand Law Society

Most substantiated complaints that are very serious are referred to the NZLS, however referral of a complaint depends on the seriousness of the complaint, nature of the complaint and history of the provider.

# Remedies for complaints

## Introduction

This part outlines the range of remedies offered to complainants.

## The Ministry's commitment

The Ministry is committed to ensuring a range of options are available to complainants and legal aid participants.

## Remedy options – Early Resolution

If a complaint progresses through the quick action process, the Ministry determines the appropriate remedy for each complaint. Options available include but are not limited to:

- recommending to the Commissioner that the legal aid matter be reassigned to another provider
- recommending to the Commissioner a reconsideration involving an examination of the cost of the case where, for example, the provider has claimed for more time than was actually spent on the case, or claimed more expenses (disbursements) than were actually incurred
- an admission of fault or an explanation or apology from the provider
- resolving any dispute about fees paid in addition to the legal aid grant, and
- where a repayment has been established, recommending to the Commissioner an assessment to 'write off' the legal aid repayment under the Act (**Note:** this involves a separate assessment process).

**Note:** More than one remedy may be applied to a particular case if the circumstances justify that course of action.

**Reference:** Sections 17, 42, 51 and 52 of the Act

## Notification to provider and complainant

### Introduction

This part outlines the notifications that are made by the Ministry once the complaints process has been completed.

### Notification to the provider

The Ministry will inform the provider:

- whether the complaint was substantiated
- if substantiated, the reasons for the decision
- of any remedial action considered necessary, and
- of any sanctions as a result of the complaint.

### Notification to the complainant

The Ministry will inform the complainant whether the complaint was substantiated. The complainant will be advised of any remedial actions that directly affect the complainant, such as reversal of fees claimed, but not of any sanctions imposed on the provider.

### Other notifications

On completion of the investigation, the Ministry informs the complainant, relevant Ministry staff and NZLS (where appropriate), whether the complaint was substantiated.

In most cases it is not necessary to release specific details of decisions. However, if requested, any relevant and necessary details, including the remedial action(s) taken (or to be taken) by the provider, can be provided to the complainant.

The Advisor or CI will use discretion to determine what the necessary and relevant information is, and what may require an assessment under the appropriate legislation.

### References:

Privacy Act 2020, section 7(2)

Official Information Act 1982, section 9(2)(a)

### **Further information**

Where further information is requested by the complainant and the complaint is not substantiated, the Ministry may outline the reasons for its decision.

## **Review of complaint outcomes**

### **Introduction**

This part outlines the Ministry's process for reviewing complaint outcomes.

### **Provider's right to seek a review**

When a provider has been notified of the Ministry's decision on the outcome and consequences of a complaint investigation, the provider can request a review of the decision.

### **Complainant's right to seek a review**

When a complainant has been notified of the Ministry's decision on the outcome and consequences of a complaint investigation, the complainant can request a review of the decision.

This review request may be made to the Office of the Ombudsman. The review request must be submitted in accordance with the Office of the Ombudsman's complaints investigation policies.

### **Timeframe for seeking a review**

A request for a review must be submitted to the Ministry in writing within 10 working days of the notification of the decision.

### **Scope of review**

Reviews of complaints investigation decisions are based on the original allegation. Some new information may be reviewed however this is at the CI's discretion with consideration to relevance.

### **Review process**

The Ministry assigns a different Advisor from the one who originally investigated the complaint to reinvestigate and reassess the information according to the Ministry's standard processes and procedures.

The Ministry's review may confirm, modify or reverse the original decision. Review decisions are authorised according to the relevant approval levels, depending on the severity of the consequences to the provider.

### **Timeframe for review**

The Ministry will reinvestigate a complaint and make a final decision within 20 working days of receiving a review request.

### **Notification of review outcome**

On completion of the review, the Ministry notifies the provider and the complainant of the outcome of the review, and the reasons for its decision.

# Document and reporting on complaints

## **Introduction**

This part outlines the documentation and reporting that is required once the complaints process has been completed.

## **Documentation**

The CI records details of complaints, including the Ministry's decision and actions taken, for analysis, reporting and auditing.

A copy of all the information (including all correspondence, recommendations, decisions and actions taken relating to the complaint) is kept on the provider's file and, where appropriate, the legal aid file.

## **Scheduled reporting**

The CI provides a summary of all complaints and actions taken to the Manager Legal Aid Providers on a monthly basis and as appropriate.

The Manager Legal Aid Providers reports substantiated complaints to the Secretary for Justice or delegated person on a monthly basis.

## **Reporting of trends**

Reports regarding complaints may be published on the Ministry's website in an anonymous format.

A trend analysis of the Ministry's actions on complaints about providers may be reported in an anonymous format.

# Chapter 6 – Complaints about PDS Lawyers

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## **Public Defence Service (PDS)**

The Ministry of Justice employs salaried lawyers to provide criminal legal aid and specified legal services through the PDS.

## **Complaints about PDS lawyers**

The PDS has its own complaints process, which reflects the fact the PDS lawyers are Ministry employees. If a complaint about a PDS lawyer is received by the Legal Aid Providers team, it should be transferred to the PDS.

# Appendix 1 – Glossary of terms

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## **Advisor**

A member of the Ministry's Legal Aid Provider Services team.

## **Authorisation**

Written permission from external complainants for the Ministry to present their name and complaint to the provider and disclose any relevant information.

## **Commissioner**

Means the Legal Services Commissioner appointed under section 70 of the Act.

## **Compliance**

There is sufficient and appropriate evidence to demonstrate a particular requirement has been complied with.

## **Contract for services (Contract)**

The agreement between the Ministry and an approved provider to supply professional legal services entered into under section 69 of the Act.

## **Complaint**

Any expression of dissatisfaction with the legal aid or specified legal services provided. This includes all complaints regardless of their origin. Complaints are categorised by the Ministry as Ministry concerns or external complaints. See [Appendix 2](#) for specific examples of complaints that may fall within minor, serious and very serious categories.

## **Complaints Register**

A central register where all complaints are recorded. The Complaints Register is an internal monitoring and reporting tool for the Ministry.

## **External complaint**

A grievance or allegation received from a source outside the Ministry about a provider's conduct, which may indicate that the provider has failed to comply with their obligations while providing legal aid or specified legal services.

## **Final Notice**

A letter that informs the provider of their obligations and the Ministry's expectations. It is a final warning and identifies the consequences where there are further substantiated complaints.

## **Legal services**

In relation to legal aid or specified legal services means legal advice and representation and includes assistance with:

- resolving disputes other than by legal proceedings

- taking steps that are preliminary or incidental to any proceedings, or
- arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings.

In relation to anything other than legal aid, includes:

- legal advice and representation and includes assistance (as above), and
- the provision of legal information and law-related education.

### **Legal aid services**

Means legal advice and representation in relation to legal aid described in the definition of legal services.

### **Ministry**

Means the Ministry of Justice.

### **Ministry concern**

Where the Ministry has concerns regarding a provider's conduct, which may indicate that the provider has failed to comply with legislative, contractual or professional obligations or practice standards while providing legal aid or specified legal services.

### **Ministry staff**

A person employed by the Ministry under an employment agreement.

### **Non-compliance**

There is sufficient and appropriate evidence to demonstrate a particular requirement has not been complied with.

### **Notice**

A letter that informs or reminds the provider of his or her obligations and the Ministry's expectations. It may also include actions to be taken and the possible consequences.

### **Obligations**

A provider's obligations as outlined in the Act, the contract, practice standards, professional obligations and any relevant policies and procedures.

### **Practice standards**

Means standards approved by the Secretary that relate to the delivery and provision of legal aid services and specified legal services.

### **Resolution**

A satisfactory outcome, which allows interests of the Ministry and the legally aided person's interests to be protected, while also ensuring that the provider's obligations have been met.

### **Secretary**

Means the Secretary for Justice.

### **Services**

Services related to the provision of legal services and specified legal services.

### **Substantiated complaint**

Where an investigation demonstrates that the provider has failed to comply with their obligations while providing legal services or specified legal services.

# Appendix 2 – Types of complaints

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## Introduction

This appendix contains examples of the two types of complaints classified according to severity.

## Serious Complaints

### Introduction

This part describes examples of serious complaints.

### Examples – serious complaints

Examples of conduct the Ministry considers as serious are listed by category below.

**Note:** This is not an exhaustive list and other conduct, depending on the type and severity, may be considered serious or very serious.

### Behavioural

Conduct that negatively impacts on:

- the relationship with the Ministry, courts and participant – for example, behaviour that is rude, aggressive or abusive, or
- the integrity of the provider, including failure to comply with obligations related to payment of taxes, and first minor traffic conviction.

### Negligence of duties or participant

Conduct such as:

- behaving incompetently (outside and inside court)
- being intoxicated or under the influence of drugs when appearing or seeking to appear for a legal aid participant
- acting without or contrary to instructions, or failing to carry out instructions
- failing to use an interpreter
- failing to cross-examine competently, or adduce available evidence
- making unreasonable threats to withdraw from proceedings
- misleading the court, or
- pressuring a participant to change plea, plead guilty or settle.

### Interactions with the Ministry and other lawyers

Conduct such as:

- breaching confidentiality

- not communicating appropriately with a participant or another lawyer
- communicating inappropriately with a participant or another lawyer
- not providing advice on progress
- obstructing or delaying proceedings, or
- conspiring to pervert the course of justice.

### **Handling of legal aid cases**

Conduct such as:

- accepting assignments with the intent to hand them over to a colleague in their firm or chambers
- behaving in a way that results in the transfer or reassignment of a legal aid file
- actively soliciting unrepresented defendants (either in the cells or court) who would normally be represented by the duty solicitor
- approaching the participant of another lawyer with the intention of seeking reassignment
- lead providers not providing adequate supervision to supervised providers or any other person working on legal aid matters, or
- breaching the Practice Standards of the contract with the Ministry.

### **Attendance or availability**

Conduct such as:

- being late for court when representing legal aid participants
- failing to arrange cover for their legal aid participants or legal aid assignments while on leave
- failing to attend arranged scheduled pre-trial meetings with prosecuting counsel
- failing to attend court on the given date of proceedings
- failing to attend duty solicitor roster dates and not scheduling a replacement or contacting the supervisor in advance
- not being available for Police Detention Legal Assistance (PDLA) work when rostered, or
- working on legal aid files or representing participants in court without appropriate approvals or contrary to the Lawyers and Conveyancers Act 2006.

### **Administrative issues**

Conduct such as:

- poor or inadequate time recording
- intentionally completing a Ministry form incorrectly
- failing to provide an invoice in the manner prescribed by the Ministry
- failing to return or transfer documents
- failing to comply with court deadlines in relation to filing of proceedings
- failing to protect the Commissioner's interests in respect to charges in favour of the Commissioner, including in relation to the proceeds of proceedings
- not complying with contractual obligations including failing to respond to Ministry requests for information, or
- failing to comply with the Practice Standards.

### **Duty Solicitor or Police Detention Legal Assistance (PDLA)**

Conduct such as duty solicitors or PDLA lawyers:

- claiming rostered hours while representing other participants at the same time
- nominating colleagues in their firm or chambers as preferred lawyers
- seeking nomination as preferred lawyer or telling participants that they will be their preferred lawyer, or

- signing off early to pick up assignments.

## Very Serious Complaints

### Introduction

This part describes examples of very serious complaints.

### Examples – very serious complaints

Examples of conduct the Ministry considers very serious include:

- allegations of serious fraudulent behaviour, for example:
  - tampering with information supplied to the Ministry
  - fabrication of participants' financial details
  - falsely signing forms
  - double and triple billing, or
  - misuse of a nominated trust account by the provider
- allegations of misconduct, for example:
  - police charges
  - inappropriate relationships with participants
  - perverting the course of justice, or
  - protracting proceedings
- providers claiming or accepting private payments from their legal aid participants where not authorised by the Commissioner
- providers claiming for
  - excessive costs
  - billing of work not undertaken
  - improper claiming of expenses, or
  - flat fee billing of disbursements rather than in accordance with the Ministry's disbursement policy
- complaints received from a judge, justice of the peace or any other member of a judicial body, or
- breaching the Practice Standards of the contract with the Ministry.

### Other matters

Other matters that may result in referral to the cancellation process under the Act include:

- a provider significantly breaching an obligation or having a history of breaching their obligations under the Act
- provider conduct or history of conduct putting the integrity and credibility of the legal aid or specified legal services at risk, or adversely affecting the provider's relationship with legal aid participants
- an audit of the provider undertaken by the Ministry raising issues about the provision of legal services
- a provider not having a practising certificate, or having:
  - had their practising certificate suspended
  - been struck off, or
  - been declared bankrupt

- a provider having been convicted of an offence, where the nature of that conviction might adversely affect their relationship with aided persons, or the integrity and credibility of legal aid or specified legal services, for example:
  - offences of the kind they may represent clients for,
  - fraud or dishonesty,
  - multiple charges of driving with excessive breath/blood alcohol,
  - assault,
  - perjury, or
  - bribery.
- a provider having had a complaint upheld by the NZLS that is a risk to the integrity and credibility of legal aid or specified legal services, or that contravenes the Ministry's Practice Standards.



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