



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

**Legal Aid**

# Quality and value audit report

Madeleine Flannagan

February 2017

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# SECTION 1 | Identifying information

## 1.1 | Provider details

<b>Name of Provider</b>	Madeleine Flannagan
<b>Provider number</b>	30307
<b>Name of firm</b>	Madeleine Flannagan - Barrister
<b>Town</b>	Auckland
<b>Approved in</b>	Family, Family Legal Advice Services, Civil Supervised and Criminal Supervised.

## 1.2 | File summary

Seven of the provider's files have been selected for audit. The following five files have been assessed by the auditor against set criteria (see Section 4).

File number	Client name
15616281	████████████████████
15617576	████████████████████
15642111	████████████████████
15633758	████████████████████
15609097	████████████████████

# SECTION 2 | Statutory authority

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## 2.1 | Authorisation

Madeleine Flannagan has been selected for an audit of the quality and value of services they provide.

Section 68 (1) of the Legal Services Act 2011 (Act) outlines the functions of the Secretary for Justice (Secretary) to:

- (a) Establish, maintain and purchase high-quality legal services in accordance with this Act;*
- (b) To perform any functions that are conferred or imposed on the Secretary by or under this Act;*
- (c) To perform any other functions relating to legal services that are conferred or imposed on the Secretary by or under any other Act.*

The audit process is governed by sections 91, 92 and 113 of the Act. These provisions outline the powers, functions and duties of the Secretary to conduct audits of approved providers of legal aid services or specified legal services:

- section 91 (1) of the Act enables the Secretary to audit providers at any time<sup>1</sup>;
- section 91 (2) of the Act requires audits to be conducted by an auditor, i.e. a person employed or appointed by the Secretary for the purpose of conducting examinations or audits, or both (section 4); and
- section 113 of the Act makes failure to comply with an audit/auditor an offence where that failure is to such a degree that the auditor is unable to satisfactorily conclude the examination or audit.

The Ministry has developed terms of reference that reflect section 91 of the Act, these were used as a framework for this audit.

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<sup>1</sup> Note: this includes the providers who were previously listed/approved with the Ministry or former Legal Services Agency

# SECTION 3 | Audit ratings

## 3.1 | Rating scale

The assessment scale below summarises:

- the ratings that can be awarded by the auditor for each file audited; and
- the overall rating that can be awarded by the auditor for legal services provided.

The auditor assesses the overall quality of the provider’s work from the sample of files. The auditor does not automatically arrive at the rating simply by averaging the scores on the individual files, although in some instances the overall rating is likely to be the equivalent of the average of the scores on those individual files. Auditors use their skill, experience and training to inform the overall rating of the provider from the trends and patterns they see on the individual files. The fundamental nature of auditing is that it is the judgement of an experienced practitioner. The auditing methodology and framework enables peer reviewers to make a judgement on how they think the work of a provider is managed, supervised and ultimately produced as a result of seeing the work in a category of law on the individual files.

Quality Assurance rating scale for each file/overall rating for legal services provided	Ratings awarded
Excellent	1
Very good	2
Acceptable	3
Poor	4
Very poor (Failure)	5
Unable to assess – where relevant documentation is absent, minimal, or so confused that an assessment cannot be made	C/A
Not applicable – cases may have aspects that do not apply, eg no hearing	N/A
<b>Value Assessment</b>	
Exceeds value assessment	Yes / No
Meets value assessment	Yes / No
Does not meet	Yes / No

## 3.2 | Key risk factors

The audit focuses on the adequacy of systems and controls in place to manage the following risks:

- unsatisfactory/inadequate service-delivery systems;
- unsatisfactory/inadequate level of legal services;
- poor value for money for the client, government and taxpayer;
- poor management of legal aid funds;

- non-compliance with:
  - legislative, contractual and professional obligations;
  - Ministry policies, procedures and practice standards; and
- complaints about the provider and mechanisms for dealing with any complaints.

# SECTION 4 | Individual file assessment

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## 4.1 | File details

*The “Chronology/Summary of file” section describes the facts of each case/file.*

*The “Key observations” section contains qualitative comments for each case based on the quality and value criteria in section 5.*

*The “Overall quality and value rating for file” presents the overall rating for each case based on the quality and value criteria in section 5.*

### 1<sup>st</sup> File

	15616281
<i>Chronology/Summary of file</i>	

This matter commenced with applications in early May 2015 and concluded when Ms Flannagan withdrew from the matter at the end of June 2016.

The client applied for on a without notice basis for protection and day-to-day care.

The protection application included a request to protect a flatmate and her children together with the client’s own children. A temporary protection order was made but the COCA proceedings were put on notice.

There were difficulties with service on the other party but eventually that occurred but he chose to take no steps.

Lawyer for the Child was appointed and made inquiries and it transpired that CYFS had ongoing concerns.

A section 132 report was obtained and in due course the court on 21 April 2016 referred the matter to CYFS under section 15 with a view to there being care and protection issues and possibly an FGC being held.

Matters proceeded by way of regular review at registrars’ lists and judicial conferences.

The temporary protection order became final automatically on 10 August 2015.

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The COCA matters were set down for formal proof.

However it transpired that Ms Flannagan lost instructions with the client not contacting her. She made significant efforts to contact the client and advised her of the position and urged her to give instructions but that did not eventuate and an order was made on 4 July 2016 allowing Ms Flannagan to withdraw.

It seems that the COCA orders were not made because the formal proof matter seemed not to proceed.

This is likely because of CYFS concerns and the fact that there was a suggestion that the father was caring for at least one of the children.

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*Key observations for file*

See separate summary relating to the files generally.

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*Overall quality and value rating for file*

Overall quality and value rating for the file of 2.

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**2<sup>nd</sup> File**

██████████ 15617576

*Chronology/Summary of file*

This was a very complicated file that had to be very sensitively managed for the protection of the client.

There were complex legal and factual issues.

The matter spanned the period mid-May 2015 to July 2016.

It is almost impossible to summarise the file in detail because of the complexity of it, but briefly the situation was as follows.

The client was from ██████████ and married a gentleman there but significant religious differences became apparent.

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She came to New Zealand when she found herself pregnant and applied for and obtained refugee status.

There is a very detailed refugee and protection report on the file which confirmed the extreme difficulties and dangers that the client faced in [REDACTED] and from her husband. Those difficulties and dangers related as well to her child.

They both faced being killed.

Various applications were made by the client including parenting orders, the removal of the father as a guardian or associated orders.

Ancillary applications were made in relation to substituted service and indeed at one stage the court ordered that the matter proceed without the father being served.

There was significant evidence about his threats and his possible terrorist connections and his views about family honour and honour killings.

The client obtained assistance and residence with a New Zealand couple who supported her.

Her family in Pakistan also filed papers which of course had to be translated. They also emphasised the dangers.

A temporary protection order and subsequently a final protection order was made.

There was a formal proof hearing on 31 May 2016 with a decision being delivered on 2 June 2016 granting the client day-to-day care in New Zealand and removing the father as guardian.

The court recorded with approval that the parenting order was made to enable the client to bring the child to New Zealand.

It transpired that the child was being cared for by the mother's family members in hiding in Pakistan.

Because of the difficulties and complexities and the absence of input from the father the court appointed Counsel to Assist who investigated matters thoroughly and prepared a report for the court and appeared at the hearing.

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The client took issue with some of the matters raised by the counsel and those were canvassed at

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the hearing and the orders which are detailed resulted.

The fees throughout were fixed fees plus as was clearly appropriate from a reading of the file.

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*Key observations for file*

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Apart from all the evidence of consistent good practice and file management on this and other files which are detailed elsewhere in the audit, the particular views of this auditor on this file relate to the particularly sensitive and appropriate way and efficient way in which the provider handled this very difficult factual matter.

Even though the father was in [REDACTED] there were threats from him to those in New Zealand.

The provider went to great lengths to promote the client's interests and to answer the various points raised by Counsel to Assist.

At the end of the day the outcome appeared to be a good one for the client.

Normally when matters proceed by way of formal proof they are relatively straightforward but the complicating matters which are highlighted in this case necessitated significant work on the part of the provider culminating in the hearing and orders.

This file showed the particular competence and understanding by the provider of the procedures and the steps necessary which were particularly unique to this case.

The fees charged in my view were more than reasonable for the complexity and nature of the matter.

As well the provider had to have significant dealings with Legal Services giving significant information and answering the various requests for further information from Legal Services. The provider reported regularly and consistently and not only presented a sound case to the court but to Legal Services for the grant and the ongoing grant.

The documents were of a particularly high standard which clearly set out the factual matters and the legal issues. The submissions to the court were clear and relevant.

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*Overall quality and value rating for file*

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This file falls well towards the top range of a rating of 2 if not a 1.

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### 3<sup>rd</sup> File

██████████ 15642111

#### *Chronology/Summary of file*

This matter commenced in August 2015 and concluded in March 2016.

The other party had applied without notice for parenting and protection. Protection was granted but parenting was put on notice.

The client pursued his contact arrangements. He formally opposed the protection order.

Lawyer for Child was appointed after the temporary protection order was made and an interim parenting order made.

Lawyer for Child assisted to negotiate an interim arrangement.

The matters were allocated a settlement conference at which it appears that agreement was reached and a consent order was made on 8 March 2016 giving the other party day-to-day care and the client regular defined contact.

That prevented what would otherwise have occurred, namely a one day substantive hearing.

Both parties had indicated a willingness to attend mediation.

#### *Key observations for file*

See the summary elsewhere of matters consisted across all the files.

#### *Overall quality and value rating for file*

Overall quality and value rating for file of 2.

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*Chronology/Summary of file*

This matter commenced on 23 July 2015 and concluded on 2 May 2016.

██████████ applied on a without notice to vary a parenting order. The Judge was initially reluctant to make such an order without notice but did so on an interim basis.

The court requested a section 131 A report and appointed Lawyer for Child.

The provider engaged in regular negotiations.

A round table meeting was convened by Lawyer for Child on 28 January 2016 at which time a consent memorandum was prepared and sent to the court.

This followed a defence filed by the other party particularly in relation to his contact.

Drugs were an issue and a test was carried out.

At one point because of concerns the other party's contact was supervised.

The final consent memorandum which was accepted giving the client day-to-day care.

*Key observations for file*

See the summary elsewhere of matters consisted across all the files.

*Overall quality and value rating for file*

Overall quality and value rating for file of 2.

*Chronology/Summary of file*

This matter spanned the time period 9 March 2015 to 2 December 2016.

Historically there had been a care arrangement between the parents following separation in 2013 of their children.

Both parties as a result of concerns about the care of the other applied to vary the arrangement and to seek their own day-to-day care.

There were allegations of domestic violence, drug taking and in relation to the other party's partner.

Initially the client's without notice application was put on notice with an indication that lawyers could not act.

However all counsel and the parties approached the court to allow lawyers to act and for the Lawyer for Child to act for all children having originally been appointed for one.

Matters continued by way of negotiations and a section 132 report.

A hearing was allocated on 27 January 2016 where the court gave the client interim day-to-day care and the other party supervised contact. There was a requirement for a further hearing in August.

At that subsequent hearing which was vacated negotiations had taken place and the court approved a consent memorandum giving client day-to-day care and the other party contact.

*Key observations for file*

See the summary elsewhere of matters consisted across all the files.

*Overall quality and value rating for file*

Overall quality and value rating for file of 2.

# SECTION 5 | Audit criteria

## 5.1 | General criteria

The quality and value of legal aid services provided are audited against the following general criteria:

General criteria	Assessment for each file				
	1	2	3	4	5
<b>1. Quality of advice and representation – has the provider:</b>					
<ul style="list-style-type: none"> <li>exercised independent professional judgement on the client’s behalf and given advice that is legally correct and appropriate, including on calling evidence, the use of experts, dispute resolution and options following the outcome of the case?</li> </ul>	2	1	2	2	2
<b>2. Supervision of the case - has the lead provider:</b>					
<ul style="list-style-type: none"> <li>adequately supervised any work undertaken by any others on the matter?</li> </ul>	2	2	2	2	2
<b>3. Record keeping - has the provider:</b>					
<ul style="list-style-type: none"> <li>kept a written record of important advice given?</li> </ul>	2	2	2	2	2
<ul style="list-style-type: none"> <li>kept a written record of key instructions given?</li> </ul>	2	2	2	2	2
<ul style="list-style-type: none"> <li>kept the file in such a way that any other lawyer could promptly ascertain relevant matters if needed?</li> </ul>	2	2	2	2	2
<ul style="list-style-type: none"> <li>kept on the file all relevant documents, correspondence received and correspondence sent, including legal aid correspondence, court documents, file notes, records of all attendances and any and all correspondence that relates to the legal aid matter?</li> </ul>	2	2	2	2	2
<b>Communication with the client - has the provider, in a timely manner:</b>					
<ul style="list-style-type: none"> <li>communicated with the client in a way that was clear, appropriate and tailored to the client’s circumstances?</li> </ul>	2	2	2	2	2
<ul style="list-style-type: none"> <li>kept the client informed about the progress of their case, the procedure and substantive issues, including opportunities to resolve matters?</li> </ul>	2	2	2	2	2
<ul style="list-style-type: none"> <li>given appropriate and sufficiently detailed advice and explanations to the client to enable him or her to make informed decisions about the matter?</li> </ul>	2	2	2	2	2
<ul style="list-style-type: none"> <li>advised the client of relevant aspects of the matter, including the material evidence, risks, costs, liability and merits of settlement?</li> </ul>	2	2	2	2	2
<ul style="list-style-type: none"> <li>provided advice to the client in writing where appropriate and practicable (subject to client instructions to the contrary)?</li> </ul>	2	2	2	2	2
<ul style="list-style-type: none"> <li>provided the client with a copy of the relevant agreement, order or judgment upon the conclusion of the matter?</li> </ul>	2	2	2	2	2

## 5.2 | Specific criteria | Family

The quality and value of legal aid services are audited against the following specific criteria:

	Criteria		Rating for each case reviewed				
			1	2	3	4	5
<b>Case</b>	a. Instructions and preparation	i. Understanding of client	2	1	2	2	2
		ii. Understanding of issues	2	1	2	2	2
		iii. Adequate research	n/a	1	n/a	n/a	n/a
		iv. Alternative dispute resolution	n/a	n/a	2	2	2
<b>Client</b>	b. Conduct and advice	i. Advice correct	2	1	2	2	2
		ii. Advice timely	2	1	2	2	2
		iii. Quality of written material	2	2	2	2	2
		iv. Use of resources	n/a	2	n/a	n/a	n/a
		v. Settlement options	n/a	n/a	2	2	2
		vi. Level of expertise	2	1	2	2	2
		vii. Supervision	2	2	2	2	2
	c. Conclusion	i. Advice on judgment	n/a	2	n/a	n/a	n/a
		ii. Settlement	n/a	n/a	2	2	2
	<b>Court or Tribunal</b>	d. Information, evidence and submissions	i. On fixtures	n/a	n/a	n/a	n/a
ii. On merits			2	2	2	2	2
iii. On progress			2	2	2	2	2
iv. Written record			2	2	2	2	2
v. Plain English			2	2	2	2	2
vi. Properly served			2	2	2	2	2
vii. Obligations met			2	2	2	2	2
<b>Legislative obligations</b>	e. Legal Services Act 2011	i. Notified client of the potential costs of services for the proceedings for which aid is sought	2	2	2	2	2
		ii. Notified Legal Aid - of any change in their address, or any increase in their income or assets (disposable capital)	n/a	n/a	n/a	n/a	n/a
		iii. Protected Legal Services Commissioner's interests - in relation to charges and proceeds of proceedings	n/a	n/a	n/a	n/a	n/a
		iv. Notified client that a repayment may be required	2	2	2	2	2
<b>Professional obligations</b>	f. Lawyers and Conveyancers Act 2006 and obligations under Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008	i. Conflicts of interest	2	2	2	2	2
		ii. Duty as Officers of the Court	2	2	2	2	2
		iii. Reasonable fees	2	2	2	2	2
		iv. Adequate provision of client care material	2	2	2	2	2
		v. Other obligations	2	2	2	2	2
	g. Compliance with Ministry Polices	i. Applications and associated processes	2	2	2	2	2

## 5.3 | Value

Family / Civil	1	2	3	4	5
a) Was the application justified and were there prospects of success (where applicable)? (section 10(4)(d) Legal Services Act 2011)	Y	Y	Y	Y	y
b) Was this a fixed fee case?	Y	N	Y	Y	Y
c) Is the fixed fee claimed verifiable to a record of work done?	Y	Y	Y	Y	y
d) If not a fixed fee case, was the time charged reasonable for all providers who worked on the case and verifiable against the time records?	n/a	Y	n/a	n/a	n/a
e) Was an amendment to grant sought for additional work (whether fixed fee or not)?	N	N	N	Y	N
f) Were providers or others who worked on the case paid in a timely manner?	n/a	Y	n/a	Y	n/a
g) Was a cost management tracking system used and was it used appropriately?	n/a	Y	n/a	n/a	n/a
h) Was it reasonable to seek an amendment to grant?	n/a	n/a	n/a	Y	n/a
i) Were any disbursements incurred appropriate and verifiable against the time records?	n/a	Y	n/a	Y	n/a
j) Did the provider use resources effectively, e.g. experts?	n/a	Y	n/a	n/a	n/a
k) Was a reasonable approach taken with the file?	Y	Y	Y	Y	y

Overall assessment of value of cases	<i>State the overall rating for the value of the case from a rating of exceeds, meets, does not meet or cant assess, and provide comments on the overall rating</i>
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**File No 1** [REDACTED]  
Meets criteria.

**File No 2** [REDACTED]  
Meets and all but exceeds criteria.

**File No 3** [REDACTED]  
Meets criteria.

**File No 4** [REDACTED]  
Meets criteria.

**File No 5** [REDACTED]  
Meets criteria.

# SECTION 6 | Final assessment

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## 6.1 | Areas of good practice

The following areas of good practice were noted:

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I have included in this section comment on all the various matters including those particularly of good practice and generally in relation to the management of matters, the construction of the files and the competence and practice of the provider.

All the files were presented in a uniform and consistent manner.

They were divided into separate subfolders for Legal Aid matters, client communication, documents from the client, documents from Lawyer for the Child, documents from the other party, court minutes and decisions etc, reports, time sheets.

The files showed that the provider has an organised and efficient practice and is well aware of court and Legal Aid procedures. Files appear to have been constructed as they evolved which no doubt made for ease of understanding.

The files made the audit particularly easy as far as understanding and following the files was concerned and would have similarly made it very easy for any other practitioner to understand the files.

Accounts were very regularly sent with a good summary of matters to that point and together with an indication of the path the matters as likely to take.

There were separate domestic violence and COCA accounts as was required.

There were no retrospective amendments to grant and indeed there were few amendments to grant at all. They mainly related to necessary disbursements.

An application for a fixed fee plus regime was only made where it was clearly appropriate.

All accounts appeared to be on the file. They equated with the fees paid by Legal Services.

Where there was a fixed fee plus regime the accounts coincided with the time sheets.

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Time sheets were presented in full on each file.

Where there was a fixed fee regime time sheets were not as relevant but the entries on those accounts were evidenced by activity and entries on the file.

Where there was a fixed fee plus regime the fees were reasonable for the particular matter.

There were regular and what appeared to be comprehensive file notes taken and recorded on the file.

The documents were of a consistent high standard and were concise and relevant to the issues.

The provider clearly had a good understanding of court practice and the law and showed a good understanding of the issues for each particular client and on each file attended to matters efficiently and within court time frames and there was no evidence of delay or adverse comment from any quarter.

The provider always (where it was possible) gave a priority to negotiation and promoted a negotiated settlement which efforts proved successful on several files.

Letters of Engagement were always sent which included the customary requirements and an overview of the Legal Aid terms and conditions including repayment requirements and advice about Legal Aid generally.

There was good and regular communication with the clients and they were kept fully informed on progress of matters and what was required of them. Copies of relevant documents and court directions and decisions were sent.

The provider tended to almost all matters herself although on some occasions matters of an administrative or "minor" matter were dealt with by a law clerk. There is never on any file direct reference to any staff member being supervised but it was clear from the consistent standard of work throughout that the provider had oversight of each file.

Again there is rarely any conflict policy stated on a file but there was no suggestion that the provider proceeded in face of any conflict and it was obvious that she was well aware of her obligations in that regard.

There was evidence of consistently high professional standards.

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## 6.2 | Areas for improvement and key recommendations

The following areas for improvement were noted:

No areas of improvement were noted.

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## 6.3 | Overall rating

Please give an overall rating for this audit and state reason below:

An overall rating of 2 is given although it can be seen that on one file at least [REDACTED] a 1 could be appropriate.

The reasons and justification for this assessment are contained variously in the summary of matters and in the analysis under Paragraph 6.1.

As will be seen the positive comments and rating of quality and value are consistent across all files.

If all the files of the provider are of the standard shown in the files audited, Legal Services can continue to deal with the provider with confidence.

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