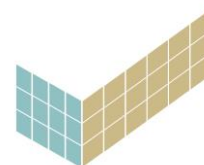




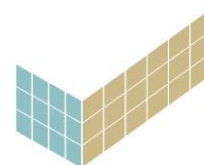
Investigations Manual

Title	Investigations Manual
Person Responsible	Manager - Investigations
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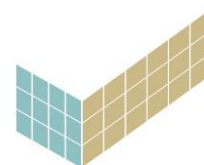


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Introduction

Purpose

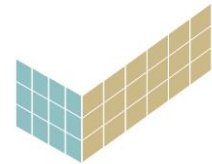
1. This manual sets out the Real Estate Agents Authority's approach to the investigation of complaints, allegations and offences.

Context

2. The Real Estate Agents Authority (the Authority) was established under the Real Estate Agents Act 2008 (the Act) and came into being on 17 November 2009.
3. The Authority works to achieve increased public confidence in the real estate industry and to having empowered consumers who participate more effectively in real estate transactions.
4. The main goals of the Authority are to:
 - better inform consumers,
 - raise standards of behaviour for licensees and
5. The Authority licences real estate professionals and provides consumers with free access to a complaints process where they can have concerns about a real estate agent's behaviour heard by an independent Complaints Assessment Committee (CAC), or the Real Estate Agents Disciplinary Tribunal (the Tribunal).

Use of this manual

6. This manual is intended for use by
 - New Investigators or employees of the Authority,
 - Established Investigators employed by the Authority,
 - External Investigators and contractors operating on behalf of the Authority during the conduct of an investigation,
 - Legal advisors and other staff as may be required from time to time.
7. This manual is not intended for publication, use or reference outside of the Authority.
8. This manual will from time to time be updated with new guidance, information, job roles, purpose, documents, templates and procedure as required.



Format of this manual

9. This manual is comprised of general principles and information along with processes supporting the operation of the Investigations Team.
10. The general principles outlined in this manual are not expected to change with any great frequency. However, the processes included in Appendices may from time to time be reviewed in order to bring them into line with best practice.

The Authority’s approach to regulation

11. The Authority is a compliance agency with a consumer protection focus. It can take legal action against licensees, or other persons involved in real estate agency work, through disciplinary action or by taking court cases against them.
12. The Authority’s approach to regulation is focussed on providing consumers with an efficient and effective service that provides both a medium to air their complaint and to respond to their complaint appropriately.
13. We do not treat every complaint the same way and we do not attempt to put every complaint in front of a Complaints Assessment Committee (CAC).
14. The Authority achieves this through providing information, issuing compliance advice where it can assist agents to comply with their obligations, bring parties together for alternative dispute resolution and, where necessary, taking enforcement action. We operate these interventions in line with the concept of the compliance pyramid (see figure one below).

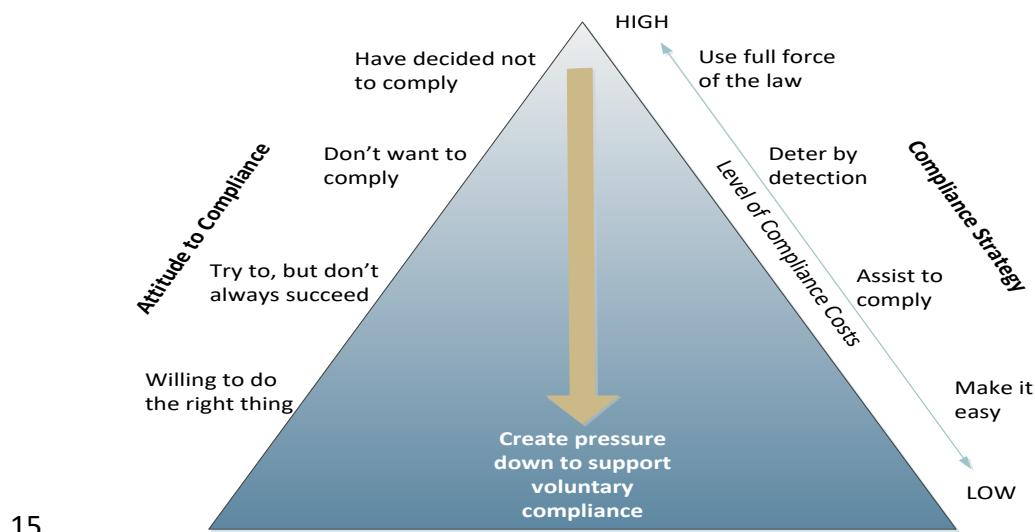
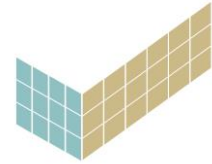


Figure 1

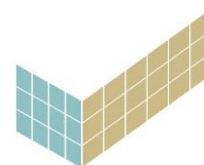


The role of an Investigator

16. From the Authority's perspective, the role of the Investigator is to gather and evaluate information.
17. A successful investigation necessitates the application of technical skills to identify what the issues are; to plan how to gather the relevant facts and admissible evidence to place before a CAC, the Real Estate Agents Disciplinary Tribunal (READT) or court in order for an outcome to be reached.
18. The investigator reports the issues, facts and evidence generally to a CAC who will make their decision.
19. It is not considered appropriate for Investigators to recommend one party's evidence is more credible than another. In practice, however, it would be acceptable for an Investigator to highlight to a CAC credibility is an issue and to comment on where there is inconsistency in a party's evidence. It is then a matter for the CAC to make its own decision on credibility, having regard for the evidential inconsistencies pointed out.
20. Investigators should not recommend outcomes to a CAC. CACs must be free to reach their own conclusions. Having recommendations in a report raises the possibility that Investigators will be seen by the Tribunal or Court as having put themselves in the position of decision maker.
21. Again, as with the issue of credibility, much can be achieved without making a recommendation. The report of an Investigator identifies the issues raised by a complaint, the possible breaches of the Act, regulations and rules that arise, and how the evidence relates to the issues. It is then a matter for the CAC to make their determination on the evidence.
22. If there is clear evidence of a breach, it can be referred to, but an Investigator's report should not go further than that.

Purpose of investigations

23. The key purpose of any investigation undertaken is to assist the CAC or the Tribunal as the case may be, to make a decision about an enforcement case. In order to achieve this, an investigation should:
 - clarify the key issues of the complaint
 - for each issue identify the:
 - a. section(s) of the Act, Regulations and/or Rules that apply



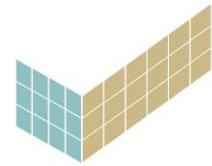
- b. evidence required to prove or disprove the behaviour of the respondent is in breach
- collect and analyse the evidence in order to support decisions about whether the breach(es) can be proved or disproved, including making any required evidence-based comments about the credibility of the parties to the concern
- provide information to support penalty decisions, to be considered together with submissions on orders received from the parties to the concern
- enable a CAC to maintain its autonomy and independence of decision making

Key stages of the investigation process

- Authorisation and scoping:
- Identification of offence or offences:
- Planning:
- Information gathering and analysis:
- Assessment of truth and validity:
- Establishment of facts:
- Decision-making:

The attributes of an investigator

- open mindedness - Don't make assumptions or jump to conclusions, be curious, ask why (and ask it a lot); a helpful problem solving technique is to ask 'why' four times e.g.
- thoroughness - Be prepared to treat all evidence as tentative until it is tested
- ethical behaviour - Don't be judgmental - you will come into contact with witnesses, licensees and other parties you may not like - don't show your personal feelings and avoid being judgmental; be mindful of the language used in your communications and final report
- integrity
- sound judgement



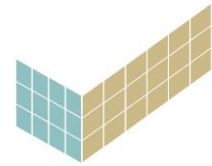
- discretion
- fortitude - remember the complaint isn't finished until the paperwork is done

Instigating an investigation

24. An investigation may be carried out by the Authority in response to:
- a complaint made to the Authority
 - any information the Authority obtains that indicates or appears to indicate, unsatisfactory conduct or misconduct on the part of a licensee,
 - any reports by licensees of misconduct or unsatisfactory conduct under clause 7 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009,
 - information the Authority receives about possible offences under the Act or any other enactments relevant to the real estate industry

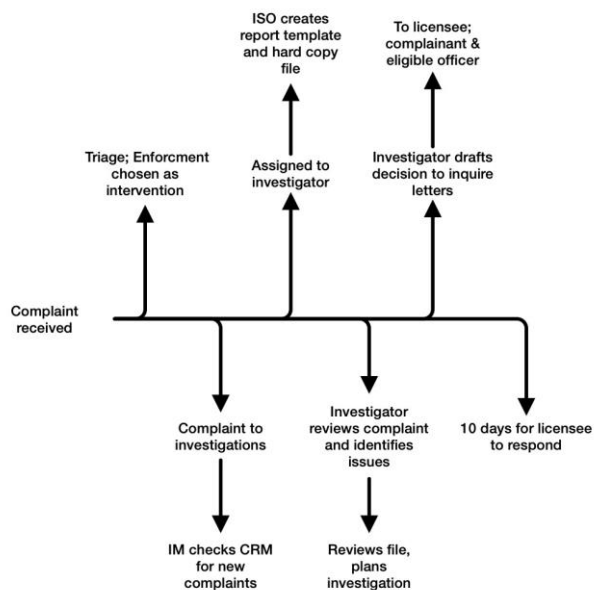
Natural justice

25. Section 84 of the Real Estate Agents Act 2008 provides that the CAC must exercise its powers and perform its duties and functions in a way that is consistent with the rules of natural justice; natural justice means fairness, and in particular, fairness of procedure.
26. There are three broad principles supporting the rules of natural justice as they apply to the Authority's complaints and disciplinary process:
- a licensee should know the nature of any complaint or allegation made against them
 - the process should be fair, open and transparent for the parties to the complaint
 - the disciplinary body considering the complaint or allegation should act without bias
27. In practice, this means a licensee must be given notice of any complaint or allegation along with the opportunity to consider and respond to all the material considered by the disciplinary body in reaching their decision.
28. Similarly, the complainant should also be given the chance to consider and comment on all the relevant material.



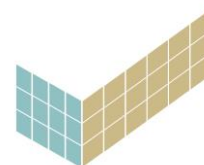
The complaints process

Overview



Receiving a Complaint

29. When a new complaint is received, the issues associated with the concern may not be entirely clear or, as is the case from time to time, there may be a large volume of information provided with the complaint.
30. It is a part of the Facilitator's role to clarify the issues of a complaint. In doing so, the most appropriate way in which to deal with a complaint will become apparent -, consumer information, compliance advice, alternative dispute resolution or enforcement.
31. Regardless of the choices made by the Authority the final decision on whether or not a complaint is submitted to the CAC rests with the complainant. If the complainant elects to have their complaint considered by the CAC, even though an alternative resolution was suggested, the complaint must be forwarded to the CAC



Triage Presentations

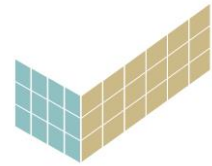
32. Triage meetings provide the opportunity for Facilitators to present the specific details of a complaint to other members of the Authority to seek approval for their recommended course of action, or in some cases, guidance on what might be a suitable method by which to deal with a complaint.
33. To assist their presentation, the Facilitator completes a Triage Presentation form, which provides the key issues of the complaint, summary of facts and relevant rules and sections of the Act.

Pre-Investigations

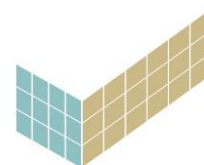
34. Occasionally Triage will be presented with a complaint where it is not entirely obvious what action should be taken in order to deal with the complaint.
35. When this happens, Triage will request a pre-investigation. This will not be a general mandate to investigate; it will be specific instructions or a request to obtain particular information to enable Triage to make a decision about what to do with the complaint.
36. Instructions issued by Triage will take the form of a file note provided by the Case Manager.
37. Pre-investigations are expected to be relatively short, discreet pieces of work that can be reported back to Triage using a File Note.
38. An Investigator may be required to report their pre-investigation findings to Triage in person, but generally this duty falls to the Facilitator.

Post-Triage meeting

39. In deciding to refer a matter for enforcement, Triage may set up a meeting between the Facilitator, Investigator and Legal Counsel. This usually happens when a complaint is considered serious, complex, and sensitive or is one that may result in media or other public interest.
40. The purpose of the meeting is to clarify and validate the issues of concern, consider and commence pre-investigation or to draft an investigation plan.
41. The outcome of the meeting will be summarised in a file note by the Facilitator. This, together with any pre-investigation file notes, will be submitted to CAC to aid in their decision making process.



42. If, subsequently, a decision to inquire is made by the CAC the Investigator who took part in the Post-Triage meeting will complete any further inquiries on behalf of the CAC.



Referring a complaint to CAC

43. If the outcome of Triage or Pre-investigation is *Enforcement* the complaint will be referred to CAC. The Case Administrator will complete an *Initial Referral Form*. This provides CAC with a précis of information taken from the complaint together with notes on their reading of the issues, the supporting evidence and the outcome sought by the complainant.

44.

Decision to inquire

45. When the CAC makes a decision to inquire into a complaint the relevant Case Administrator will allocate the complaint to the Investigations Support Officer (ISO) using the 'Investigator' field on the Concern/Enquiry screen of CRM. This indicates the complaint has been handed over to the Investigations team.

46. All information is to be updated within three working days.

47. The ISO will remind licensee via email that their response to complaint is due. A reminder will be sent two working days prior to the due date of the licensee's response. The reminder email will be stored in the appropriate CRM folder.

48. If a licensee's response becomes overdue, the ISO will ensure the Case Manager has not granted an extension of time for the licensee's response before sending a follow up email to the licensee, which explains their response to a complaint is overdue and should be provided by close of business.

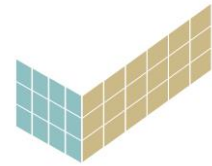
Timeliness in conducting investigations

49. The Authority's Statement of Intent (SOI) sets out an end to end process time of 6 months for completion of 75% of the complaints handled by the Authority.

50. To meet this requirement, investigations that follow a CAC's decision to inquire should be completed at the earliest opportunity after being assigned to an Investigator, it is anticipated most investigations should be capable of completion within three months of being allocated to an investigator.

51. There no merit in receiving and investigating an allegation of an offence against the Act that details a historic or an aging offence. There must be a realistic prospect of completing an investigation of the offence and allowing the prosecutor a reasonable time to review and comment on the case.

52. Complaints about aged or already out of time allegations should be accepted on the basis that they are for information and intelligence only. No formal action will be



taken in respect of these complaints. However, an information or compliance letter may be used to bring the issue to the attention of the respondent of the complaint.

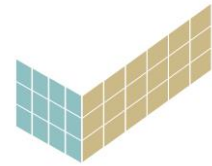
Conducting an investigation

The principles of investigation

53. Any investigation carried out by the Authority should observe the following principles:
- The process of investigation involves consideration of the sources of evidence relevant to the complaint, allegation or offence under investigation
 - The prospect of an accurate assessment of the complaint, allegation or offence under investigation increases with speed of response
 - The Investigator collects evidence and must allow the facts to reveal the truth of a complaint, allegation or offence under investigation
 - Direct evidence from individuals can be affected by their perception of events. Every effort should be made to obtain corroboration of substantiation of a person's evidence
 - A mental note is good; if the information is meaningful then it's advisable to make a written note of it
 - Confidentiality, sensitivity and privacy must be carefully considered

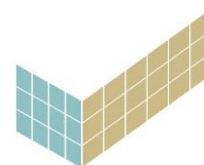
Investigation Process

54. New process is to send out the decision to inquire letter and do that within 5 days of a complaint being allocated
55. Use the investigation plan, activity log and job sheets if necessary to track investigation work and contact with parties to the complaint; include all telephone calls, meetings, interviews, emails and letters.
56. Seek comment from the complainant on the licensee's response. There is no requirement to disclose the licensee's response in full during the active portion of an investigation, and in fact, experience has shown that disclosing the licensee's full response at an early stage in the investigation is likely to result in a lengthy response



from the complainant, much of which reiterates the original complaint - with little by way of new factual information or evidence.

57. It is preferable to contact the complainant directly to clarify specific points of interests or ambiguity. A record of the conversation should be made and a file note created, which summarises the salient points of the conversation. It may be appropriate to give the complainant opportunity to confirm the content of any file notes.
58. If the complainant raises new information, it will be necessary to put this new information to the licensee. This step may be repeated if the licensee in turn raises new information. Again keep a log of the contact with complainants and licensees in the investigation plan activity log.
59. Conduct the required background searches e.g. licensing, QV, Terranet, Trade Me as appropriate. Complete the particular requests for information, documentation or actions requested by the CAC.
60. Referring to the list of witnesses required to be interviewed in the investigation plan, plan interviews using the PEACE Model. Use the 9-square; 4-square and wants analysis to note topics that must be covered during the interview. See the detailed guidance on conducting PEACE Model interviews.
61. Conduct interviews by phone or in person. Any evidence that is requested or supplied by an interviewee must be handled in accordance with the Evidence Management Procedure. See the detailed guide on Evidence Management.
62. When a witness statement is required following a telephone interview, use interview notes or an audio recording to prepare a statement for the witness, using the witness statement template. Send a copy of the statement to the witness for them to provide feedback on any incorrect or missing information. When the statement is complete, ask the witness to sign and return a copy of the statement. See the detailed guide on the PEACE Model and Witness Statements.
63. When a witness statement is required following a face-to-face interview, prepare a statement for the witness by handwriting or typing the statement on-site using the witness statement template. When the statement is complete ask the witness to sign the statement. It is also acceptable, but not desirable, to follow the guide for telephone interviews when conducting a face-to-face interview. See the detailed guide on the PEACE Model and Witness Statements.
64. When a licensee interview is required, use a digital audio recorder to record any telephone or face-to-face interview. Follow the PEACE Model when setting the parameters for the interview, including management of legal representatives. Arrange for transcription of the interview record. There is no need to seek confirmation of the interview record, it acceptable to provide a copy of the interview to the licensee upon their request to do so.



65. On occasion, a party to a complaint may refuse to provide documents or information. If that is the case, the CAC has the option to request the information or documentation using the provisions of Section 85 of the Real Estate Agents Act 2008.
66. To use a Section 85 notice to further an investigation, the Investigator should initially speak with the Chair of the CAC, explain what has been requested and that the request has been refused. If the Chair of the CAC is in agreement with the issue of a Section 85 notice, the Investigator should produce a notice using the appended template. The completed notice should then be forwarded by email to the Chair of the CAC for signature.

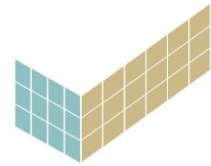
Practice Note: Requesting information from Licensees during an investigation under sections 83 and 85

This Practice Note is intended to assist REAA's investigators in collecting information from Licensees. It is not intended to be prescriptive or comprehensive. The provisions of the Real Estate Agents Act 2008 and associated Regulations will always prevail over the content of this Note.

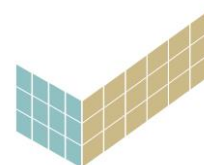
1 What powers do investigators have to request information from Licensees? What are the limits on these powers?

A section 83 notice

- 1.1 Under section 83 of the Real Estate Agents Act 2008 (**REA Act**), a Committee has the power to issue a written notice requesting a licensee to supply certain information to the Committee in writing.
- 1.2 An investigator that has been authorised by a Committee under section 82(2) of the REA Act to assist it with its inquiry may exercise this section 83 power.
- 1.3 Any request for information by an investigator on behalf of a Committee must directly relate to the subject matter of the Committee's Decision to Inquire. Section 83 must not be used to obtain wholly irrelevant material from Licensees.
- 1.4 A section 83 notice permits the Committee to request a very broad range of information from Licensees. The notice may request the Licensee to provide papers, documents, records or things, in respect of which a section 85 notice may follow if the Licensee fails to comply (as discussed below). Additionally, the section 83 notice may request the Licensee to provide specified information in the form of answers to questions (which cannot be the subject of a section 85 notice).



- 1.5 A section 83 notice should stipulate a reasonable time frame within which the requested information should be provided.
- A section 85 notice*
- 1.6 A section 85 notice may be issued if the Licensee fails to comply with the section 83 notice within a reasonable time (and the other requirements of section 85 can be complied with).
- 1.7 Section 85 permits the Committee to require the production of papers, documents, records or things by any person.
- 1.8 Unlike a notice issued under section 83, section 85 only permits the Committee to require the production of specified categories of material (namely, papers, documents, records, or things). “Things” is clearly intended to include tangible items such as CDs, or hard drives, and cannot be interpreted more broadly than that. It does not permit the Committee to use the notice to ask questions of the Licensee.
- 1.9 Section 85 only applies if:
- (a) The person has failed to comply with a previous request for the information (such as, in the case of a Licensee, a notice under section 83) within a reasonable time; **and**
 - (b) The Committee members believe on reasonable grounds that:
 - (i) Requiring the person to produce information to the Committee is necessary to enable the Committee to carry out its inquiry; **and**
 - (ii) It is not reasonably practicable to obtain the required information from another source **OR** it is necessary to obtain the required information to verify or refute information from another source.
- 1.10 Having considered these matters, the Committee should record in writing (signed and dated by the Committee’s Chairperson) its belief that the matters in section 85 are satisfied in the particular circumstances, as well as its decision to issue the section 85 notice in writing.
- 1.11 A section 85 notice must stipulate the manner and time frame within which the information must be provided (the timeframe should be reasonable, and must be not less than 10 working days from the date the notice is issued to the Licensee).
- 1.12 The notice must be delivered to the individual in one of the following ways:
- (a) In person;
 - (b) At the individual’s usual or last known residence or business;



- (c) By post;
- (d) By email, provided the following requirements are met:
 - (i) The recipient must have consented to receiving information of this kind in electronic form. Inferred consent is sufficient, meaning that if the Committee or investigator has communicated with the individual **by email** prior to the notice being sent, without any objection by the individual, consent can be inferred. If no previous correspondence has been sent and received from the recipient **by email**, the recipient should be specifically asked if they consent to receiving a notice under the REA Act by email. If consent is specifically declined or retracted, obviously the notice should be sent in another way.
 - (ii) The notice must be readily accessible for subsequent reference. Sending a PDF by email is acceptable and other formats may be appropriate, but a format where the information subsequently expires or cannot be accessed after a certain period will not be acceptable.

1.13 The following templates are **attached** as an appendix to this note:

- (a) Template wording which investigators may use to inform the Committee that the investigator believes a section 85 notice is warranted; and
- (b) A template section 85 notice.

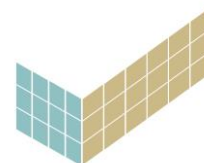
1.14 Please note that these are templates **only** and should be amended appropriately to take account of the particular circumstances in which the notice is being considered or issued.

2 Are there other limits on the ability to request information from a Licensee?

2.1 Rule 9.17 of the *Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012* restricts the circumstances in which a Licensee may disclose confidential client information. The Privacy Act also restricts the circumstances in which personal information may be disclosed.

2.2 If a request for information from a Committee includes personal information about other people, such as a Licensee's clients, a Licensee may be reluctant to provide that information to the Committee if they perceive there to be a risk that doing so may breach the Rules or the Privacy Act.

2.3 However, the Rules provide that a Licensee may disclose confidential client information if they are required by law to do so. The Privacy Act provides that any restriction on disclosure of information contained in the Privacy Act will be trumped by any other statutory provision authorising or requiring disclosure.



- 2.4 REAA recognises that compliance with the REA Act, the Rules, and the Privacy Act is ultimately a matter for the Licensee. We discuss below the steps that should be taken if a Licensee is reluctant to respond to a section 83 notice, one of which may include asking the Committee whether it wishes to follow up with a section 85 notice. Under section 86(1), a person who receives a section 85 notice must comply with the notice.

3 What happens if a Licensee fails to respond to a section 83 or section 85 notice?

- 3.1 A Licensee may be reluctant to provide certain information in response to a section 83 notice, including if he or she is concerned about potentially breaching the Privacy Act (as discussed above). Licensees who are reluctant to respond to the section 83 request should be informed that:

- (a) While the Act does not require the Licensee to respond, it may be in the Licensee's best interests to provide the information sought, as it will help to inform the Committee's investigation.
- (b) If the Licensee does not respond, the Committee may elect to issue a notice under section 85 of the Act.

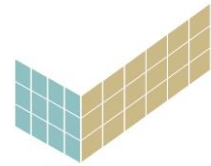
- 3.2 If a Licensee fails to respond within the stipulated timeframe (which should be reasonable), or refuses to respond, to a section 83 notice, the Committee may:

- (a) Complete its investigation without the requested information; or
- (b) Consider whether to issue a section 85 notice (provided the requirements of section 85 (set out in paragraph 1.9 above) can be met); or
- (c) Consider whether the Licensee's non-compliance with the section 83 request warrants an own-motion inquiry into that conduct.

- 3.3 If a Licensee fails to respond to a section 85 notice within the time frame stipulated in the notice, and does not have a reasonable excuse for doing so, that person commits an offence under section 148 of the REA Act. Depending on the circumstances, disciplinary action for failure to comply with the notice may be an option as well.

4 Where should an investigator go for more information?

- 4.1 Any questions about the content of this Practice Note should be directed to REAA's legal team at legal@REAA.govt.nz.
- 4.2 If you are in any doubt about the exercise of your powers to request/compel the production of information by a Licensee in the context of a specific investigation, please approach the legal team for advice.

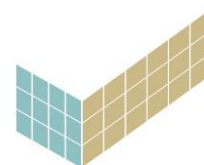


Preparing the investigation report for CAC

67. When all CAC instructions have been carried out, inquiries completed and statements prepared - an investigation report can be compiled. Depending upon the complexity of the investigation itself, two report formats are available. Use the long format report for the more involved investigations and the shorter format report for cases in which the licensee's response addresses the complaint with little or no further investigation having been required.
68. Ensure all the documentation associated with the investigation is saved in CRM. Print the documentation, refer to each document as an appendix in the report and add it to case paper file.
69. If a report is complex or contains novel circumstances or issues, the Investigator may choose to submit the report to a colleague for peer review.
70. Submit the completed case paper file to the Investigations Manager for sign off.

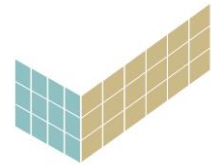
Full disclosure to all parties

71. Prepare the covering letters and documentation to disclose to the parties. See the detailed procedure on Full Disclosure.

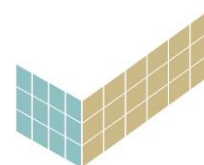


Management of investigation issues

72. If an investigation goes off track, an Investigator must:
- *Acknowledge the problem as soon as possible*; raise the problem with the Manager Investigations. This may additionally include notifying anyone that has been unfairly prejudiced as a consequence of the problem unless this would exacerbate the problem or compromise the investigation
 - *Fix the specific problem if at all possible*
 - *Fix the general problem*; in any case where an investigation has gone wrong due to a procedural issue, action must be taken to rectify that issue across the board.
 - *Excessive delay*, claims of excessive delay may come from either party to a complaint or may be identified by the Manager Investigations, Manager Complaints Assessment Committees or some other source. However the delay is identified - the Manager Investigations will arrange appropriate action which may include:
 - Investigation of the reason for the delay,
 - Review of the investigation plan to see if it can be streamlined,
 - Notification of the delay to the CAC chair,
 - Notification of all parties to the complaint,
 - A revised timetable for completion of the investigation, including:
 - Monitoring and supervision of the investigation to closure.
 - Appointment of a new Investigator or further Investigator.
 - *Investigations that become complex*; if an Investigator feels out of their depth due to the complex nature of an investigation, they should acknowledge it, check the investigation plan and seek advice or extra resource from the Manager Investigations.



- *Rectifying an investigation that has gone off track;* it may be possible for an investigation to be brought back on track by getting the Investigator and the Manager Investigations to revisit the investigation plan to identify where and why the investigation lost direction. If the investigation is beyond the competence or capability of the current Investigator, formal training or coaching may be required. In exceptional circumstances, it may be necessary to replace the Investigator.
- *Failure to abide by the principles of procedural fairness;* This can sometimes be remedied by backtracking and affording the procedural fairness (natural justice) that has been denied. This can most obviously be achieved before a complaint is referred back to the CAC for determination. If an issue arises after a matter has been referred back to the CAC, the issue is most likely to result in an appeal to the READT.



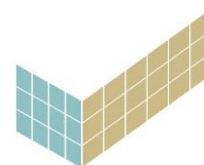
Authority investigations

Investigation of allegations

73. Authority initiated investigations are a function of the Authority in sections 12(j) and 12(k) Real Estate Agents Act 2008. They are similar in process to a CAC initiated investigation.
74. It should be noted that the Authority does not have an express power to require attendance at or participation in interviews when conducting an Authority investigation and there is no equivalent to a Section 85 notice in Authority investigations.
75. On completion of an Authority investigation, the completed report will be reviewed by the internal and external legal teams.
76. On completion of any review, the Investigator will lay a charge, as formulated by the external legal team, with the District Court.

Unlicensed trading

77. Each year the Authority receives dozens of allegations of unlicensed trading. Generally, these allegations are made by licensed real estate agents. The Authority is in the process of establishing a benchmark for cases that warrant action for unlicensed trading.
78. Each case must be considered on its own individual merits, but there are a handful of cases that give an indication of what might be considered unlicensed trading.
79. The case of Ewan McLeod is one such case. McLeod was found guilty of unlicensed trading after he gave more than general advice; attending open homes; giving his own name as point of contact; charging a fee and thus undertaking real estate work.
80. Contrast this with the business of Home Sell who only market properties, for a fee.
81. Unlicensed trading will not be discussed at a Triage meeting; they will be referred directly to investigations.



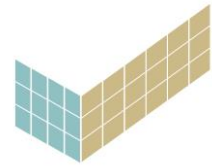
82. Allegations, of unlicensed trading or alike, must be dealt with in such a way as to allow a charge to be laid with the court within 5 years of the date of commission of any alleged offence.

Property Finders

83. Act on instructions from a client to assist them in finding properties for a fee. It is not considered unlicensed trading if the intention of the property finder is solely to locate and shortlist properties for their client.
84. However, if a property finder views properties, negotiates price or carries out some other element of real estate work, whilst acting on behalf of a buyer, in order to bring about a transaction - the property finder may well be guilty of unlicensed trading.
85. As to the question of fees; if a fee was not charged, would it make a difference? This is dependent on the individual circumstances of each allegation. One point is clear it does not matter how a fee is charged - it doesn't have to be a commission - "In Trade" means any type of charge.

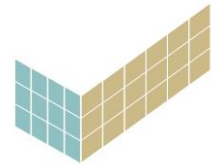
Property Traders

86. Buy and on sell of properties at a profit by way of contemporaneous sale.
87. The facts will determine if there is sufficient evidence to prosecute a property trader for unlicensed trading. But, in principal there is nothing wrong with someone buying 15 properties on an unconditional contract with the intention to sell them on.
88. A problem may arise if there is any deception by the property trader involved e.g. if a person places an advertisement offering assistance to find a property for purchase but the buyer/client is not told that the property sold to them belongs to the advertiser. This was an issue in the HomeBuyers case. Deception is key, if there is no deception then there may well be no issue; there is nothing wrong with on selling property as long as there is no deception involved.
89. Alternatively, a charge under the Fair Trading Act may be an option. This may provide a means of dealing with property traders accused of unlicensed trading.
90. A charge might follow from a concern about how a sale is explained e.g. an advertisement that says – "Are you looking to become a property Investor?", when in fact the properties are owned by the advertiser, a fact not declared beforehand.

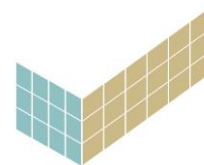


Charges - READT

92. New process in place now that we can quote here
93. Once the legal review of the file is complete, the legal team will send the legal advice and draft charges to the Case Manager.
94. The Case Manager forwards these documents and a prepopulated “CAC Decision to refer matter to Disciplinary Tribunal” (the Decision) to the CAC for their approval (All three panel members have to agree). These emails are saved in CRM.
95. Upon approval, the Case Manager affixes the Chairperson’s electronic signature to the Decision and Charges and saves the file as a PDF in CRM. The Case Manager:
- identifies an approved Process Server to serve the documents,
 - gets in touch with the service provider and obtains a cost estimate,
 - then prepares an expenditure approval form.
96. The Case Manager prepares the documentation for the Complainant:
- Cover letter
 - CAC Decision to refer to Tribunal
 - Charges
97. The Case Manager prepares the documentation for the Licensee:
- Cover letter
 - CAC Decision to refer to Tribunal
 - Draft charges
 - Response to Charge
98. The Case Manager prepares the documentation for the Registrar:
- Cover letter and copies of:
 - Copy of the decision to refer to READT
 - Copy of the Charges



- Copies of cover letters to the Complainant and the Licensee
 - The Case Manager prepares the documentation for the Process Server:
 - Cover letter with contact details of the Licensee.
99. The Case Manager couriers the documents to the respective parties
100. The copy to the READT is hand delivered by the Compliance Administrator
101. A scanned copy of documents to be delivered to the Registrar is saved in CRM. A copy is emailed to the legal team and the Investigator.
102. The Case Manager updates CRM
- Status: *In appeal period*
 - Investigation: *Complete*
 - Determination: *Referred to READT*
103. The READT will send an “Acknowledgement of charges”.
104. On receipt of the statement of service from the Process Server, the Case Manager send the following documentation to the identified Case Manager at the READT:
- Statement of service
 - Updated contact details (including email if possible) for the Licensee
 - Licence detail (of the licensee at the time of conduct).



Relevant Legislation

Real Estate Agents Act 2008

96 Protection and privileges of witnesses

Every person has the same privileges and immunities as a witness has in a court of law in relation to—

- (a) the giving of information to a Committee; and
- (b) the giving of evidence to, or the answering of questions put by, the Committee; and
- (c) the production of papers, documents, records, or things to the Committee.

Privacy

Information about the act and how we administer it

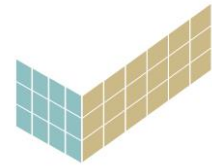
Evidence Act

30 Improperly obtained evidence

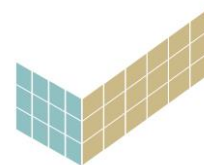
(1) This section applies to a criminal proceeding in which the prosecution offers or proposes to offer evidence if—

- (a) the defendant or, if applicable, a co-defendant against whom the evidence is offered raises, on the basis of an evidential foundation, the issue of whether the evidence was improperly obtained and informs the prosecution of the grounds for raising the issue; or
- (b) the Judge raises the issue of whether the evidence was improperly obtained and informs the prosecution of the grounds for raising the issue.

(2) The Judge must—



- (a) find, on the balance of probabilities, whether or not the evidence was improperly obtained; and
 - (b) if the Judge finds that the evidence has been improperly obtained, determine whether or not the exclusion of the evidence is proportionate to the impropriety by means of a balancing process that gives appropriate weight to the impropriety but also takes proper account of the need for an effective and credible system of justice.
- (3) For the purposes of subsection (2), the court may, among any other matters, have regard to the following:
- (a) the importance of any right breached by the impropriety and the seriousness of the intrusion on it:
 - (b) the nature of the impropriety, in particular, whether it was deliberate, reckless, or done in bad faith:
 - (c) the nature and quality of the improperly obtained evidence:
 - (d) the seriousness of the offence with which the defendant is charged:
 - (e) whether there were any other investigatory techniques not involving any breach of the rights that were known to be available but were not used:
 - (f) whether there are alternative remedies to exclusion of the evidence which can adequately provide redress to the defendant:
 - (g) whether the impropriety was necessary to avoid apprehended physical danger to the Police or others:
 - (h) whether there was any urgency in obtaining the improperly obtained evidence.
- (4) The Judge must exclude any improperly obtained evidence if, in accordance with subsection (2), the Judge determines that its exclusion is proportionate to the impropriety.
- (5) For the purposes of this section, evidence is improperly obtained if it is obtained—
- (a) in consequence of a breach of any enactment or rule of law by a person to whom [section 3](#) of the New Zealand Bill of Rights Act 1990 applies; or
 - (b) in consequence of a statement made by a defendant that is or would be inadmissible if it were offered in evidence by the prosecution; or
 - (c) unfairly.
- (6) Without limiting subsection (5)(c), in deciding whether a statement obtained by a member of the Police has been obtained unfairly for the purposes of that provision, the



Judge must take into account guidelines set out in practice notes on that subject issued by the Chief Justice.

S 60 Privilege against self-incrimination

(1) This section applies if—

(a) a person is (apart from this section) required to provide specific information—

(i) in the course of a proceeding; or

(ii) by a person exercising a statutory power or duty; or

(iii) by a police officer or other person holding a public office in the course of an investigation into a criminal offence or possible criminal offence; and

(b) the information would, if so provided, be likely to incriminate the person under New Zealand law for an offence punishable by a fine or imprisonment.

(2) The person—

(a) has a privilege in respect of the information and cannot be required to provide it; and

(b) cannot be prosecuted or penalised for refusing or failing to provide the information, whether or not the person claimed the privilege when the person refused or failed to provide the information.

(3) Subsection (2) has effect—

(a) unless an enactment removes the privilege against self-incrimination either expressly or by necessary implication; and

(b) to the extent that an enactment does not expressly or by necessary implication remove the privilege against self-incrimination.

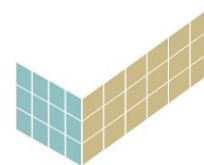
(4) Subsection (2) does not enable a claim of privilege to be made—

(a) on behalf of a body corporate; or

(b) on behalf of any person other than the person required to provide the information (except by a legal adviser on behalf of a client who is so required); or

(c) by a defendant in a criminal proceeding when giving evidence about the matter for which the defendant is being tried.

(5) This section is subject to section 63.



New Zealand Bill of Rights Act 1990

24 Rights of persons charged

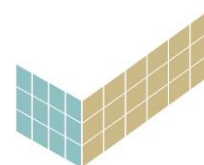
Everyone who is charged with an offence—

- (a) shall be informed promptly and in detail of the nature and cause of the charge; and
- (b) shall be released on reasonable terms and conditions unless there is just cause for continued detention; and
- (c) shall have the right to consult and instruct a lawyer; and
- (d) shall have the right to adequate time and facilities to prepare a defence; and
- (e) shall have the right, except in the case of an offence under military law tried before a military tribunal, to the benefit of a trial by jury when the penalty for the offence is or includes imprisonment for more than 3 months; and
- (f) shall have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance; and
- (g) shall have the right to have the free assistance of an interpreter if the person cannot understand or speak the language used in court.

25 Minimum standards of criminal procedure

Everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights:

- (a) the right to a fair and public hearing by an independent and impartial court:
- (b) the right to be tried without undue delay:
- (c) the right to be presumed innocent until proved guilty according to law:
- (d) the right not to be compelled to be a witness or to confess guilt:
- (e) the right to be present at the trial and to present a defence:



(f) the right to examine the witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as the prosecution:

(g) the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty:

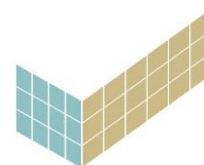
(h) the right, if convicted of the offence, to appeal according to law to a higher court against the conviction or against the sentence or against both:

(i) the right, in the case of a child, to be dealt with in a manner that takes account of the child's age.

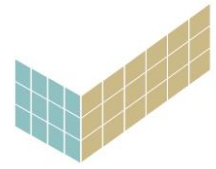
Offences the Authority prosecutes

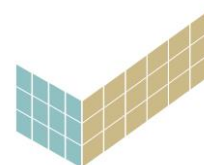
The Authority predominantly takes prosecutions under the Act. However, we can also take prosecutions against licensees under the Fair Trading Act. The individual offences that the Authority can prosecute are,

Offence	Relevant act	Detail
Unlicensed trading	s141, REA Act*	The Authority is the primary prosecutor for these offences.
Holding out as a real estate agent	s142, REA Act	



Employing an unlicensed person to undertake real estate agency work	s143, REA Act	
Providing false or misleading information	s144, REA Act	
Failure to notify change in circumstance	s145, REA Act	
Failure to give possession of documents when required	s146, REA Act	
Failure to provide financial records when required	s147, REA Act	
Failure to provide information or document under s85 notice	s148, REA Act	
Failure to pay money to a person lawfully entitled	s149, REA Act	
Failure to hold money for 10 days	s150, REA Act	
Failure to disclosure conflict of interest	s151, REA Act	
Rendering false accounts	s152, REA Act	
Resisting, obstructing or misleading the Authority	s153, REA Act	This applies where someone is trying to exercise any power or perform a function under the Act.
Misleading and deceptive conduct	s9, FTA**	
False Representations and misleading conduct	s14, FTA	
<p>* REA Act – Real Estate Agents Act 2008</p> <p>** FTA – Fair Trading Act 1986</p>		





Glossary of Authority terms

Absolute liability refers to a type of offence where, in relation to statute, the element of 'intent' (mens rea) is not required to establish the offence, and where a defence of total absence of fault does not apply.

Accepted is a case status where the Authority considers it has sufficient information to know what the complainant's concern is.

Achieve compliance or variant refers to a compliance subject becoming compliant and/or compliance being maintained by a compliance subject, through voluntary compliance and/or in response to intervention by a compliance organisation or organisations.

Admissible refers to evidence which is probative and relevant and which is not excluded by any rule of law as determined by a judge in a judicial hearing.

Allegation refers to a concern raised with, and investigated by, the Authority that does not meet the requirements of Regulation 4 of the Real Estate Agents (Complaints and Discipline) Regulations 2009.

Alternative Disputes Resolution ... and mediation, negotiation, conciliation

Appreciation (or 'an appreciation') is the act of logically considering a given problem by assessing relevant factors and limitations and coming up with a workable plan by choosing among or between the courses open.

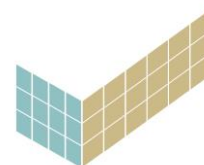
Approved means the applicant is a "fit and proper person" and meets licensing requirements.

Breach - See 'non-compliance'.

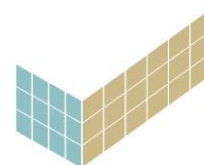
Complaints Assessment Committees' (CACs') decisions include: unsatisfactory conduct, charge, and no further action.

Unsatisfactory conduct

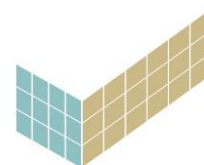
A CAC determination, finding the licensee guilty of unsatisfactory conduct. This determination is of a lesser charge than the determination of misconduct but is still likely to involve orders for disciplinary actions on the licensee. An Unsatisfactory Conduct determination means the CAC will publish on the public register, their decision and any



disciplinary actions against the licensee.
<p><i>Charge (misconduct, referred to Tribunal)</i></p> <p>This is a determination made by the CAC of a charge of misconduct against the licensee. This charge is then referred to the Real Estate Agents Disciplinary Tribunal and notice must be given to both the complainant and the licensee.</p>
<p><i>No further action</i></p> <p>The CAC may make a determination of no further action where the complaint does not amount to either unsatisfactory conduct or misconduct by the licensee, or if the complaint relates to an inconsequential matter.</p>
<p><i>Case management system</i> refers to the system that is established to plan, manage, record, report, and review a case.</p>
<p><i>Complaint</i> refers to a concern raised with the Authority about a licensee that meets all the requirements of Regulation 4 of the Real Estate (Complaints and Discipline) Regulations 2009. A concern may be placed 'on hold' until it meets these requirements. Legally the Authority must refer every complaint to a Complaints Assessment Committee.</p>
<p><i>Complainant</i> refers to a person who raises a concern.</p>
<p><i>Compliance (role of)</i> refers to the role, in a public sector organisation, of assessing compliance subjects' levels of adherence with regulatory requirements and carrying out any appropriate intervention.</p>
<p><i>Compliance auditing</i> refers to planned and systematic examination of compliance subject processes and practices in terms of how they demonstrate and/or support compliance.</p>
<p><i>Compliance advice</i> is a formal advice to a person that their actions and/or omissions may amount to non-compliance and which may or may not include mention of the possible consequences of continued or repeated non-compliance.</p>
<p><i>Compliance environment</i> refers to the physical, social, economic, political, and geographical environment that a public sector organisation's compliance role is carried out in.</p>
<p><i>Compliance investigation</i> refers to the process of gathering and assessing information to determine facts and, thereby, to determine degree of compliance or otherwise.</p>
<p><i>Compliance organisation</i> for the purpose of this Guide, refers to a public sector organisation</p>



that carries out a compliance role or roles.
Compliance subject refers to a natural person or an entity subject, in a particular compliance context, to being regulated.
Consumer information refers to information supplied to a consumer who has raised a concern with the Authority, but for which the Authority will not be taking action.
Contact refers to all contact made with the Authority through any medium on any matter.
Crime refers to an offence for which the alleged offender may be proceeded against by indictment.
Criminal proceeding refers to a court-based proceeding for a breach of law for which a sanction is sought.
<p>Elements (of offences) are the underlying factors which are common or rudimentary to any offence. They are:</p> <ol style="list-style-type: none"> 1. A physical element, called ‘the act’, referred to as <i>actus reus</i>. 2. A mental element or state of mind, called ‘the intent’, referred to as <i>mens rea</i>. <p>It is noted that it is not uncommon for compliance practitioners to use the terms ‘elements’ and ‘ingredients’ interchangeably.</p>
Enforcement refers to processes and actions taken to compel statutory compliance.
Evidence refers to information given personally, or drawn from a document or exhibit, which tends to prove or disprove a fact.
Evidential review ...
Exhibit refers to material evidence secured in the course of an investigation.
Field phase (of an investigation) refers to the active or operational phase of an investigation, and does not preclude an entirely office-based investigation.
Forensic refers to the use of scientific methods in investigations.
General Enquiries refer to contacts that are not concerns or licensing enquiries



Information (as in ‘an information’) is the physical document, sworn before a district court, used to commence proceedings.

Ingredients refer to the details or components of an offence which are unique to the offence and which must be proven. It is noted that it is not uncommon for compliance practitioners to use the terms ‘elements’ and ‘ingredients’ interchangeably.

Intelligence is information to which an interpretation has been applied following analysis of that information. *Intelligence* refers collectively to the functions, activities, people, or organisations that are involved in the process of planning, gathering, and analysing information that leads to the production of intelligence products which are of potential value to decision makers.

Interpreter refers to a person who is trained and qualified to carry out interpreting or ‘spoken translation’.

Intervention refers to any action, or set of actions, taken by a compliance officer to encourage compliance or to hold a compliance subject accountable for non-compliance. These may include non-sanction interventions as well as sanctions.

Investigation(s) refers to the collection of evidence to support the decision being made about potential enforcement outcomes. A case can be ‘under investigation’ as an Authority investigation or through the direction of a CAC.

Judicial review refers to the review by a court of a decision made or process carried out by a decision making body.

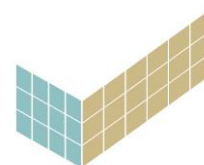
Legal person may be a natural person or an entity, such as a limited liability company, that is treated as a person for certain purposes.

Licensee

Non-compliance refers to a breach of, or failure to comply with, regulatory requirements which may or may not amount to an offence. Regulatory requirements may include derivatives such as Rules, Bylaws, and licences.

Non-sanction intervention refers to an intervention which is intended to result in compliance, but without use of sanction. It can involve any of informing and assisting, deterring, or directing a compliance subject.

Offence is a violation or breach of a law or rule.



Offence Investigation refers to an Authority investigation of alleged unlicensed trading.

If the investigation finds that the respondent is unlicensed, it will lay information with the District Court that the respondent is operating in breach of the Real Estate Agents Act 2008.

Received refers to the Authority receiving a complaint. Some complaints require further information from the complainant before being accepted. Legally a complaint must meet Regulation 4 of the Real Estate Agents (Complaints and Discipline) Regulations (2009).

Regulatory environment refers to the social, political, and regulatory framework within which compliance organisations operate.

Regulatory model is the model used by an organisation to describe its compliance strategy.

Regulatory theories are theories describing approaches considered effective and efficient for achieving compliance.

Rule refers to any requirements established by, or derived from, statute. Examples of derived rules are Regulations, Bylaws, licences, codes of conduct and other permissions.

Rules of evidence are those rules relating to use, admissibility, and limitations of evidence in a judicial hearing.

Sanction (noun) is a penalty or other punishment imposed for a breach of the law.

Scene refers to the physical place where an apparent offence is or has been committed and/or where any physical evidence leading to possible establishment of an offence is located.

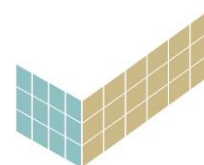
Security and evidential requirements are the requirements adopted by a compliance organisation to keep information and exhibits secure against unauthorised access or loss, and to ensure admissibility and reliability in a judicial proceeding. Evidential requirements are a subset of these and relate to admissibility of evidence.

SMEAC stands for situation, mission, execution, administration including logistics, and commands. It is a planning framework used to develop and document operational plans.

Standard of Proof

Beyond a reasonable doubt

This standard of proof is satisfied if a court is left with no reasonable doubt that the event in



question occurred. This is the standard of proof that must be satisfied by the prosecution in criminal cases.

Balance of probabilities

This standard of proof is satisfied if a CAC considers the occurrence of an event was more likely than not. This is the standard of proof in civil cases. It also applies to the defence in criminal cases.

Strict liability refers to a type of offence where, in relation to statute, the element of 'intent' (mens rea) is not required to establish the offence, but where a defence of absence of fault may apply.

Surveillance refers to maintaining either covert or overt observations on a location, activity, or person.

Suspect refers to a person suspected of breaching a rule or involved in breaching a rule. Other terms used for *suspect* may include but are not limited to – duty holder, potentially liable party (civil or criminal), person of interest, party who is the focus of investigation or compliance action, responsible person, respondent, alleged offender. A *person* may be a legal entity such as a company or partnership.

Suspended means the licensee chose to suspend their licence.

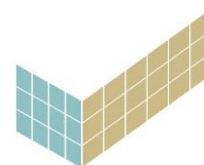
Vicarious liability is a term that relates to a person having liability through the actions or omissions of another person.

Victim refers to a person against whom an offence is committed and/or who suffers injury or loss. 'Victim' may include family members as set out in the Victims' Rights Act 2002.

Voluntary compliance is a reference to compliance achieved through information approaches and is encouraged by cases where enforcement action has been taken.

Withdrawn refers to a complainant's request to withdraw a complaint, which can occur at any stage. However, if the complaint has been referred to a CAC, the CAC may decide to continue its investigation into the matters of the complaint.

Achieve compliance or variant refers to a compliance subject becoming compliant and/or compliance being maintained by a compliance subject, through voluntary compliance and/or in response to intervention by a compliance organisation or organisations.



Assist, for the purpose of this unit standard, refers to providing help or support to a compliance subject with the aim of encouraging compliance.

Admiralty Grading System is an internationally accepted method of evaluating the reliability of the source of information and the validity of the information supplied by that source. Evaluation in this way enables the Intelligence Analyst to determine the value of the information to their analysis.

Attributes, for the purpose of this assessment, may include skills.

Calls for service, for the purpose of this assessment, relate to the receipt of information alleging non-compliance or requesting compliance assistance. Sources of calls for service may include but are not limited to – a complaint, an internal or external referral, a tip-off, anonymous information, a request for assistance from compliance subject, an enquiry from a member of the public.

Case refers to a problem or situation involving non-compliance, alleged non-compliance, or possible non-compliance requiring a regulatory response.

Civil proceeding refers to a court-based proceeding for a breach of rights or other non-criminal matter, for the purpose of seeking a remedy by way of damages, injunction, or other court order.

Clients refer to authorised persons who use intelligence or information, and may include internal clients including, organisation, business unit, team, computer system and/or external clients: government agencies, enforcement organisations

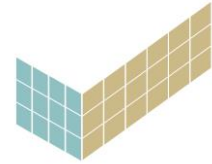
Compliance (role of) refers to the role, in a public sector organisation, of assessing compliance subjects' levels of adherence with regulatory requirements and carrying out any appropriate intervention.

Compliance environment refers to the physical, social, economic, political, and geographical environment that a public sector organisation's compliance role is carried out in.

Compliance investigation refers to the process of gathering and assessing information to determine facts and, thereby, to determine degree of compliance or otherwise.

Compliance options may also referred to by alternative terms, such as 'treatments for achieving compliance', 'tools for achieving compliance', or 'strategies for achieving compliance'.

Compliance subject refers to a natural person or an entity that is subject, in a particular compliance context, to being regulated.



Control refers to command or direction of an operation.

Corporate liability, for the purpose of this assessment, may include Crown liability.

Criminal proceeding refers to a court based proceeding for a breach of law for which a sanction is sought.

Deductive logic refers to the application of logic when the inference is based directly on the premises. Thus if the premises are true the inferences must be true.

Elements (of offences) are the underlying factors, which are common or rudimentary to any offence. They are:

1. A physical element, called 'the act', referred to as actus reus.
2. A mental element or state of mind, called 'the intent', referred to as mens rea.

Incident, for the purpose of this unit standard, refers to a situation that requires an immediate compliance response. Examples are – responding to a workplace accident, responding to a toxic spill, responding to a domestic incident, attending a crime, attending a crash, responding to poaching.

Inductive logic means the reasoning process by which a conclusion or inference is reached from a set of propositions or premises. It involves the application of logic when the inference goes beyond the premises.

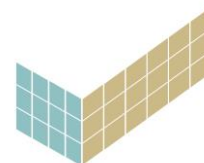
Inference means a statement derived from an assumption based on a logical conclusion or one that is probable based upon reasoning from known parts or evidence. Inferences may be a conclusion, hypothesis, estimation, or prediction.

Ingredients refer to the details or components of an offence which are unique to the offence and which must be proven.

Inform, for the purpose of this assessment, refers to giving information to a compliance subject with the aim of encouraging compliance.

Information means facts that are known or could be discovered from any source. Examples may include written or oral reports or documents, description of an event, or an activity, unevaluated material of every description, at all levels of reliability, and from any sources from which intelligence can be developed.

Intelligence is information to which an interpretation has been applied following analysis of that information.



Intelligence also refers collectively to the functions, activities, people or organisations that are involved in the process of planning, gathering and analysing information that leads to the production of intelligence products which is of potential value to decision makers.

Intelligence product refers to the end result of the production step of the intelligence cycle, in which information is developed into an intelligence product through integration, analysis, evaluation and interpretation of all available information.

Intelligence analysis process refers to processes undertaken by Intelligence Analysts to produce intelligence products.

Intervention refers to any action, or set of actions, taken by a compliance officer to encourage compliance or to hold a compliance subject accountable for non-compliance. These may include non-sanction interventions as well as sanctions.

Legal person may be a natural person or an entity, such as a limited liability company, that is treated as a person for certain purposes.

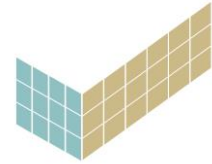
Meaningful to the compliance subject refers to risks and/or benefits not specifically related to the exercise of compliance in terms of statutory requirements. Examples of risks in this regard may be – increased insurance costs, increased absenteeism due to negative health effects, loss of business reputation, decreased value of a property; and examples of benefits may be – reduced insurance costs, reduced absenteeism due to health benefits, enhanced business reputation, maintained or increased value of a property.

Obiter ('obiter dicta') refers to guidance or reasoning that does not form part of, or is broader than, the ratio of the judicial decision.

Offence is a violation or breach of a law or rule. For the purpose of this unit standard, offences may incorporate any non-compliance with statute, Regulations, Bylaws, licence conditions, and other subordinate legislation.

Organisation refers to a public sector organisation, as listed in the Public Sector Directory.

Organisational requirements refer to instructions to staff on organisational policy, procedures and methodologies, which are documented and are available in the workplace. These requirements include any legal or ethical requirements relevant to the organisation and may include but are not limited to – site specific requirements, company quality management requirements, approved codes of practice and guidelines, and legislative requirements.



Others may include but are not limited to colleagues from own and/or other organisations, contractors, compliance subjects, potential or actual victims, witnesses, members of the public including any bystanders, and emergency support personnel.

Other organisations refers to other compliance organisations with which one's own organisation interacts for compliance purposes and may also refer to any organisation or service, other than a compliance organisation, which supports own organisation's compliance activity. Examples of these are: a university service for expert advice or witnesses, a forensic computer analyst, a transcribing service, a law firm, a business consultancy, a process server.

Premise refers to a key point statement or proposition or arguments derived from the information analysed.

Ratio ('ration decedendi') refers to the court's decision in relation to the point in question or under appeal.

Regulatory environment refers to the social, political and regulatory framework within which compliance organisations operate.

Regulatory model is the model used by a compliance organisation to describe its compliance strategy.

Sanction (noun) is a penalty or other punishment imposed for a breach of the law.

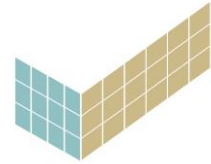
SMEAC stands for situation, mission, execution, administration including logistics, and commands. It is a planning framework used to develop and document operational plans.

Source is anyone or anything from which information can be obtained and may include but is not limited to persons, organisations, open or closed (internal/external) sources e.g. internet (open).

Suspect refers to a person suspected of breaching a rule or involved in breaching a rule. Other terms used for **suspect** may include but are not limited to – duty holder, potentially liable party (civil or criminal), person of interest, party who is the focus of investigation or compliance action, responsible person, respondent, alleged offender. A **person** may be a legal entity such as a company or partnership.

PROBLEM – SOLVING

1. Identify **three** problem-solving models. For each model: (9695 1.1 – 1.3)
 - describe the model



- explain it's purpose
- explain each stage of the model
- outline advantages and disadvantages of the model

Model 1:

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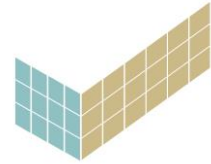
Model 2:

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Model 3:

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2. Outline **three** problem-solving techniques. These may include creative, analytical and sequential or any others that are relevant in your work. For each technique: (9695 2.1 – 2.2)
 - explain its purpose
 - outline advantages and disadvantages of the technique



Technique 1: Mind Maps

Click here to enter text.

Technique 2: Story-boarding

Click here to enter text.

Technique 3: Ask Questions

Ask 'Why' a problem is occurring and then ask 'Why' four more times.

For example...

1. Why has the machine stopped?

A fuse blew because of an overload

2. Why was there an overload?

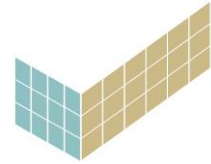
There wasn't enough lubrication for the bearings

3. Why wasn't there enough lubrication?

The pump wasn't pumping enough

4. Why wasn't lubricant being pumped?

The pump shaft was vibrating as a result of abrasion



5. Why was there abrasion?

There was no filter, allowing chips of material into the pump.

Installation of a filter solves the problem.

The Six Universal Questions

Idea Generators should be aware of a simple universal truth. There are only six questions that one human can ask another:

What?

Where?

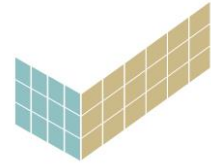
When?

How?

Why?

Who?

[Click here to enter text.](#)



Document templates

Decision to inquire letters

Investigation documents

Reporting documents

CRM information

Template wording for investigators to use to inform Committee that a section 85 notice may be justified