



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

# Legal Aid Audit Report

Analysis of the 2018-2019 and 2019-2020  
audit programmes

Legal Aid Providers – March 2021

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# Audits by the numbers

The quantitative analysis presented in this report covers both the 2018-2019 and 2019-2020 (financial year) legal aid audit programmes. These audit cycles are compared and analysed separately.

## Audit results and sanctions

The Ministry completed 113 audits in 2018-2019 and 111 audits in 2019-2020. This covered approximately 5% of all lawyers providing legal aid services (providers) in each year.

Figure 1 shows the distribution of audit ratings for each year. In both 2018-2019 and 2019-2020, more than 80% of the providers audited received a rating of 3 (acceptable) or above; 88% in 2018-2019 and 84% in 2019-2020. Across both years, an average of 50% of those audited received a rating of 2 (very good) or above.

**Figure 1: Distribution of audit ratings in 2018-2019 and 2019-2020**

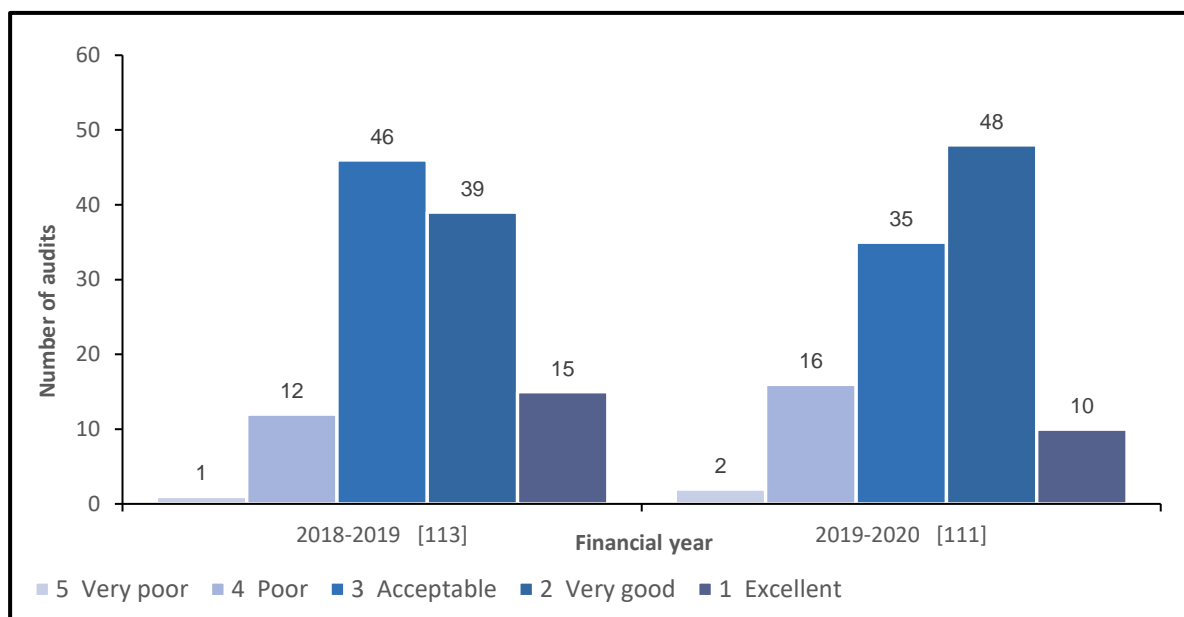
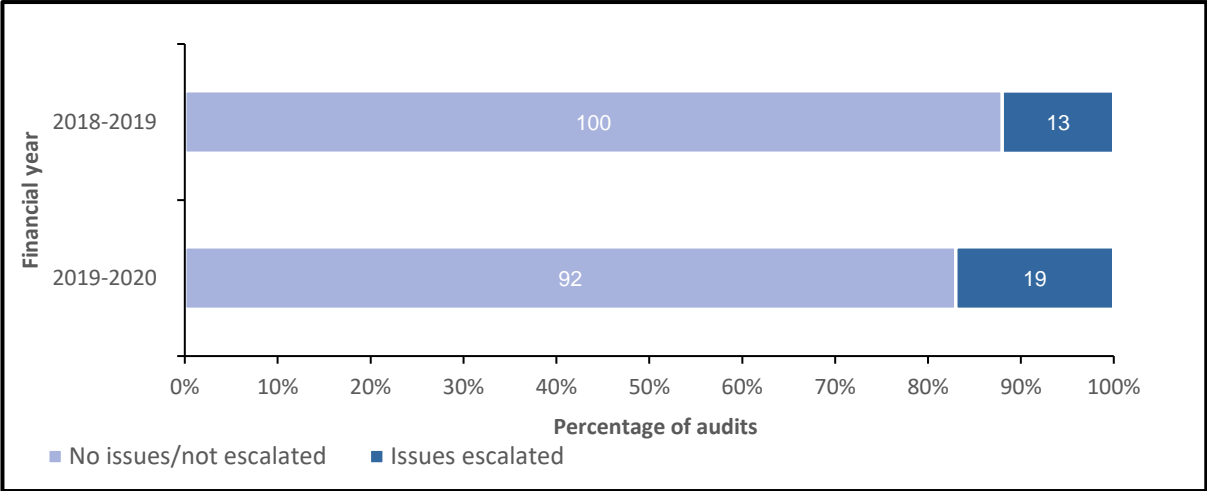


Figure 2 shows the number of audits completed in 2018-2019 and 2019-2020 and whether the audits identified issues that were escalated to the complaints process.

Often issues identified in an audit can be addressed in a letter to the provider setting out the auditor's recommendations for improvement.

Audits that identify substantive quality issues or persistent administrative failings may be escalated to the complaints process. In most cases audits which result in a final rating of 4 (poor) or 5 (very poor) will be escalated.

**Figure 2: Audits escalated to the complaints process in 2018-2019 and 2019-2020**

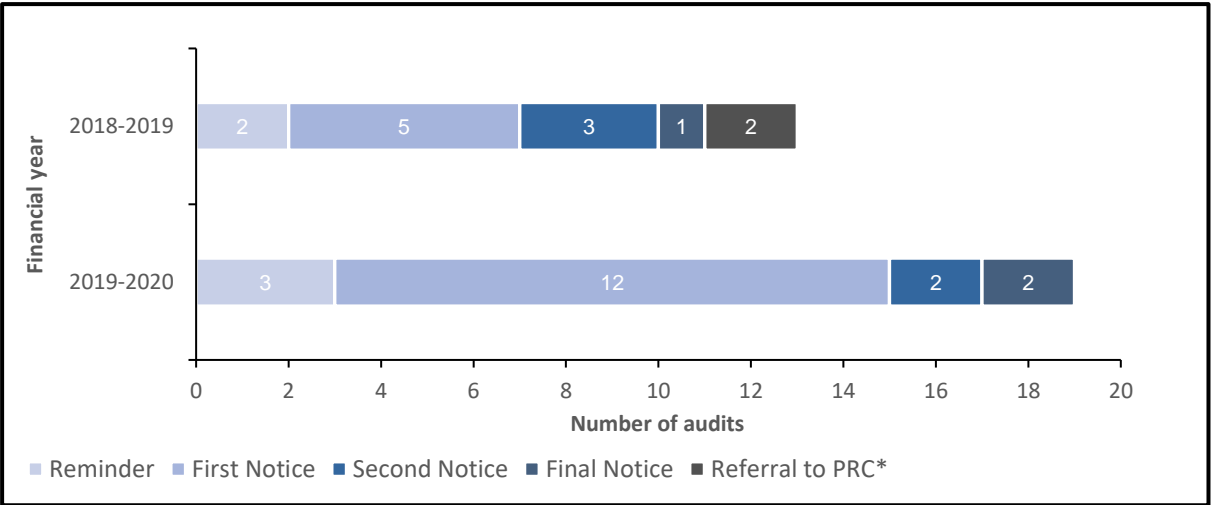


The Ministry can issue sanctions ranging from a reminder of expectations letter to a final notice. The first, second and final notices are usually issued sequentially, but may be issued out of order when an audit identifies a very serious issue.

The number of sanctions issued in a particular audit programme depends on the complaint and audit history of that year’s group of providers. For example, if a high proportion of the providers have already received their first notice, it is more likely that second or final notices will be issued. This can skew the results shown in Figure 3.

Figure 3 shows the sanctions imposed following the escalation of audits to the complaints process in 2018-2019 and 2019-2020. It shows a large increase in the number of providers issued a first notice in the 2019-2020 audit programme. This reflects the larger number of audits escalated to the complaints process in the 2019-2020 programme (17%) compared to the 2018-2019 programme (12%). The main reasons for escalation are discussed later in this report.

**Figure 3: Sanctions for audits escalated to the complaints process 2018-2019 and 2019-2020**



## **Final notices and the performance review committee**

The issuing of a final notice usually means that a provider is close to being referred to the Performance Review Committee (PRC). A notice may be accompanied by a warning that failure to comply may result in a PRC referral. A provider can also be referred directly to the PRC where the issues are sufficiently serious.

The PRC provides advice to the Secretary for Justice (the Secretary) about the most serious issues arising from legal aid audits and complaints. The PRC is an independent body established under section 79 of the Legal Services Act 2011 (the Act). It consists of a chairperson and eight members, all of whom are senior lawyers.

The Secretary makes a referral to the PRC when a provider has failed to comply with a condition of their approval, the Act, or the Legal Services (Quality Assurance) Regulations 2011 (the Regulations) and, if proven, the failure would justify the cancellation or modification of the provider's approvals.

On the advice of the PRC, the Secretary can impose sanctions that include:

- modifying or cancelling a provider's approval(s)
- requiring the provider be supervised by another legal aid provider
- barring a provider from applying for an approval for between 3 months and 2 years.

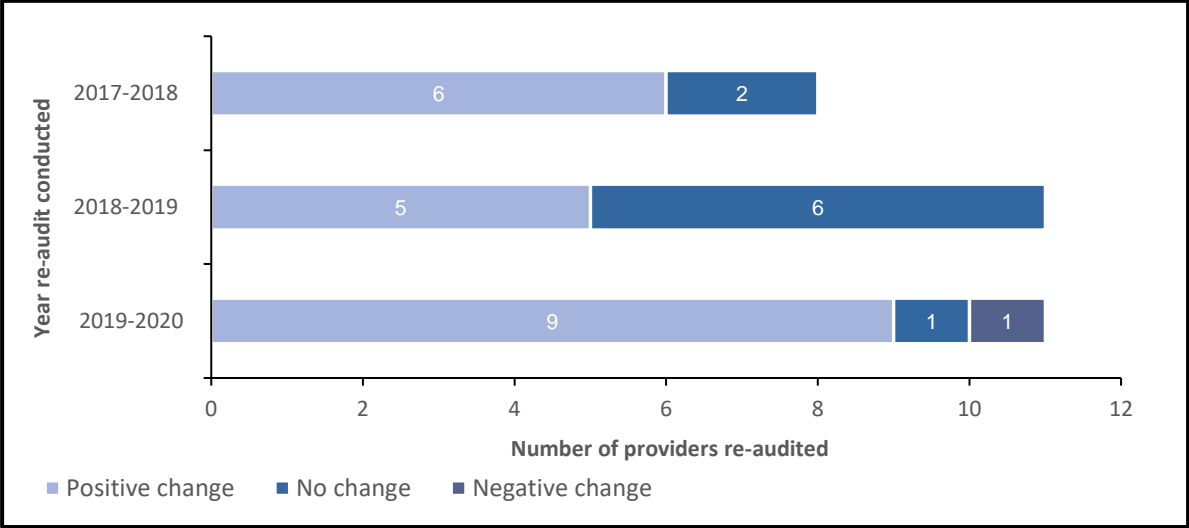
Two providers were referred to the PRC in 2018-2019 and none were referred to the PRC in 2019-2020. The 2018-2019 PRC referrals resulted in the Secretary imposing a six-month supervision condition on both providers, as well as scheduling an on-site re-audit in 2020-2021.

## **Re-audits and audit effectiveness**

When a provider is referred to the complaints process, the Ministry will usually re-audit the provider in 12 to 24 months to verify that they implemented the auditor's recommendations. It is not always necessary to re-audit a provider if they have already sufficiently addressed concerns and the Ministry is confident that a re-audit is unnecessary.

To see if audits and re-audits are effective, the Ministry compared original audit and re-audit ratings for all providers re-audited over the last three audit programmes. Figure 4 shows whether those providers' ratings improved, stayed the same, or worsened between their original audit and their re-audit.

**Figure 4: Change in audit rating between initial audit and re-audit**



These results show that providers usually improve by at least one full audit rating between their original audit and re-audit. On average, 67% of re-audits led to an improved rating. 30% of re-audits resulted in no change in rating, and in only 3% of the re-audits considered (1 provider) the rating worsened. In that case the provider’s rating changed from 4 (poor) to 5 (very poor) and a final notice was issued.

In 5 of the 30 re-audits examined, the provider’s rating improved by more than one grade. This means some providers are substantially improving their performance between their original audit and re-audit.

When re-audits do not result in an improved rating, this usually means that the provider has failed to implement the original auditor’s recommendations. Rarely are new issues the main driver of a provider’s 4 (poor) or 5 (very poor) re-audit rating.

## On-site and off-site audits

On-site audits involve an assessment of five files at the provider’s workplace. The identity of the auditor is known to the provider and the auditor will usually interview the provider during the audit.

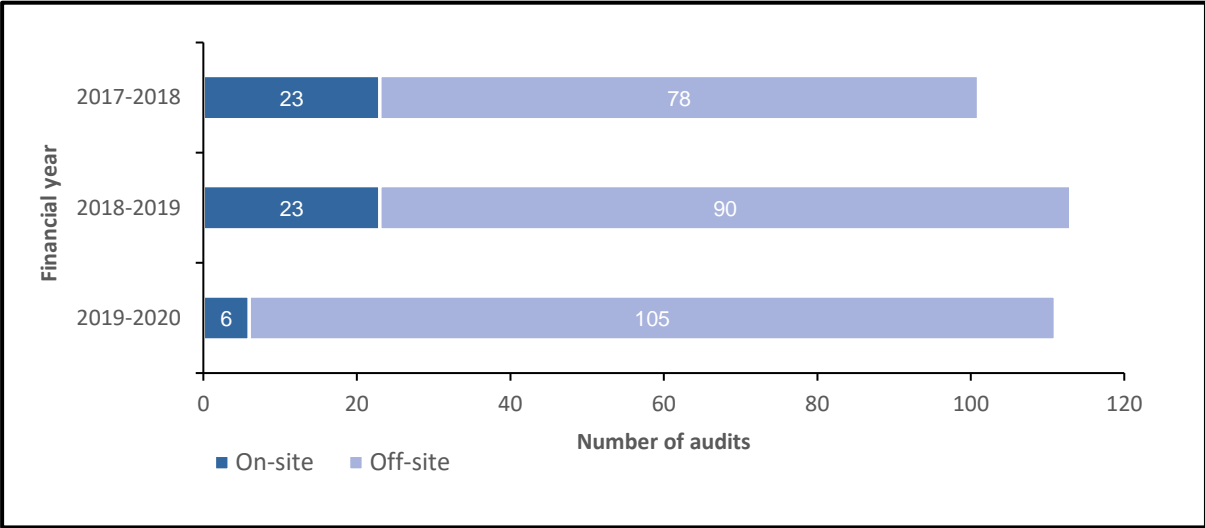
Off-site audits involve a remote assessment of five pre-selected files sent by the provider. The auditor is anonymous and does not interview the provider as part of the audit. Following the on-site or off-site assessment, the auditor will prepare a draft report and provide an opportunity for the provider to respond before the audit is finalised. This process is mediated by Ministry staff.

The auditor is required to take the provider’s response into account before finalising their report. Once the audit report is finalised, the Ministry considers whether remedial action is required.

On-site audits were introduced in the 2017-2018 audit programme. Approximately 20% of all audits are expected to be on site, which includes all audits of providers practising in the Waitangi Tribunal due to the size and complexity of the relevant files.

Figure 5 sets out the number of off-site and on-site audits completed in the last three audit programmes. Originally 27 providers were selected for on-site audits in 2019-2020. Unfortunately, the COVID-19 pandemic meant only 6 of the planned on-site audits were completed due to Alert level travel restrictions. The remaining audits were completed as off-sites.

**Figure 5: Number of on-site and off-site audits**



The Ministry has received feedback from providers and auditors that on-site audits are preferable to off-site audits, because issues can be immediately addressed and clarified during the interview. On-site audits also offer a chance for the auditor to make practical recommendations about administrative practices observed during the audit

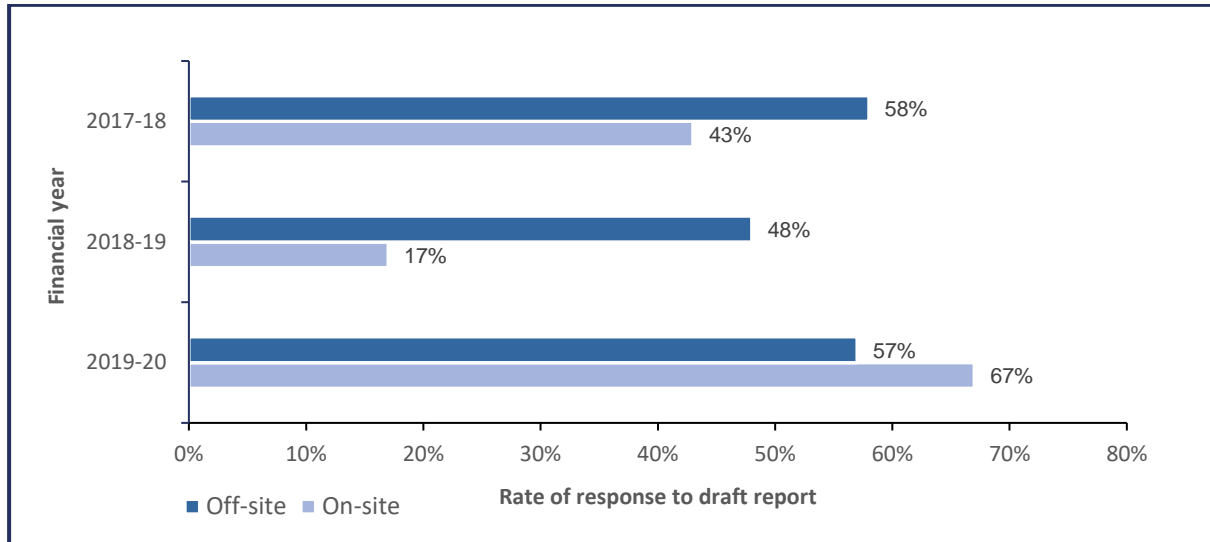
To explore this feedback, the Ministry has looked at the rate providers respond to the auditors’ draft reports in on-site versus off-site audits. This assumes providers who accept the auditor’s findings are less likely to respond to the draft report.

Figure 6 shows the percentage of providers who responded to auditors’ draft reports over the last three audit programmes. It shows providers are less likely to respond to the auditor’s draft report when the audit is conducted on site.

The average response rate was 42% for on-sites and 54% for off-sites. If the 2019-2020 on-site response rate is excluded (given the unrepresentative sample of only 6 audits) the average on-site response rate was only 30%. This may be because providers have the

opportunity to discuss the initial findings and any recommendations for improvement prior to receiving the draft report.

**Figure 6: Provider response rates for on-site and off-site audits**



It is difficult to isolate other variables that may influence these results, and the analysis is limited by the short amount of time on-sites has been occurring. However, Figure 6 does show that providers are substantially less likely to respond to draft on-site audit reports. This may indicate that there is an advantage to the face-to-face components of the on-site audit process.



# A closer look at the main issues

Legal aid audits involve an examination of an individual provider's files to check they are providing a good quality, cost effective services to their clients.

The Ministry examined a sample of 25 audits from each of the 2018-2019 and 2019-2020 audit programmes. Reports were selected from each rating category, with a particular focus on providers who received 4 (poor) and 5 (very poor) ratings.

The themes identified in the 2018-2019 and 2019-2020 programmes were similar. There are three main themes:

- service quality
- administrative obligations
- invoicing

This section will also briefly discuss four other important issues:

- time recording
- privacy concerns
- private payments
- proceeds of proceedings

## Service quality

Auditors commonly assess the quality of providers' services by reviewing written submissions on the file, assessing how the provider has prepared for hearings and examining the outcome of each case.

Auditors may also rely on evidence of charge negotiations, use of alternative dispute resolution in family or civil proceedings, and whether the legal advice recorded on the file is accurate and well reasoned.

Service quality is one of the primary assessment factors. This means it often determines how other factors such as administrative compliance and value for money affect the overall audit rating. For example, if the quality of the assessed services are poor, the overall audit rating will likely be low even if the provider complies with their file management obligations and the value of the services provided is fair. The inverse is also true, if the assessed service quality is high, the provider may receive a higher rating than their administrative practices would initially suggest.

## **Excellent (1) and very good (2) results**

When a provider receives an audit rating of 1 (excellent) or 2 (very good) they will have provided good quality services on all audited files. It was rare for the auditor to observe any issues with the quality of the provider's work at this level, and commonly the auditor was impressed by the commitment demonstrated by the provider.

Evidence of good quality services included records of legal research and hearing preparation, frequent contact with the client (using letters, emails or texts), sound written advice, and detailed file notes about each court event. Final reporting letters would usually set out the client's appeal rights and explain what occurred.

*"The best possible outcomes were achieved for each client."*

*"The provider appears to be a very competent litigator as evidenced by the outcomes [they] achieved for [their] clients. Furthermore, it was admirable the extent to which the provider went to advocate on behalf of [their] clients."*

*"The client had some personal issues that were dealt with really well."*

## **Acceptable (3) results**

At this level the services provided continued to be of good quality. While isolated issues were found, it was rare for an auditor to observe a significant quality issue and still award a rating of 3 (acceptable). Most audits at this level focused on issues in other areas, such as file administration.

Occasionally, isolated quality issues were identified, but a significant lapse would usually result in a rating of 4 (poor) or below.

Providers that might otherwise have received a rating of 4 (poor) because of inadequate compliance with their file keeping obligations were often given a rating of 3 (acceptable) where the quality of services provided was very good.

*"Files progressed in a timely and efficient manner. Practical and realistic advice given. Good communications with client and Prosecution."*

*"The submissions were of poor quality but the result was good."*

*"There is a need for closer supervision of less experienced solicitors to avoid wrong advice being given."*

## Poor (4) and very poor (5) results

Providers who received poor audit ratings were commonly hampered by inadequate record keeping. It was common for the auditor to find that records of what occurred during the case, the advice provided to the client, and the client's instructions, were limited or completely absent.

Often the auditor was so limited by this lack of documentation that they could not properly assess the quality of services provided. In some cases the outcome was unknown, which affected the assessment of the quality of the services provided in that case.

On rare occasions the advice provided to the client was incorrect, or there were other issues that cast doubt on the quality of services provided. Sometimes, the auditor accepted that the quality of the services provided was probably good, but was unable to give the provider a higher rating because the quality of those services could not be assessed using the files.

*“Acceptable to good outcomes achieved on all files audited. Very poor file maintenance.”*

*“The material on this file was too limited...In effect the auditor should be able to pick up the file, understand the history and outcome of the grant of aid as well as make an assessment of the quality of and value of [the] service provided to the customer.”*

*“This file is a complete mess and I was unable to follow it. I was unable to work out what charges the legal aid grant being audited applied to, what work was performed and what the outcome was.”*

*“The provider is clearly competent, but [their] file administration needs improving.”*

## Administrative obligations

The standard of file-keeping expected of legal aid providers is set out in their contract and the Practice Standards.<sup>1</sup> The touchstone for compliance is that another provider should be able to pick up the file and quickly identify the status of the case and its history.

Compliance with file-keeping obligations protects the provider, ensures that Ministry audits can occur, and improves the quality of the information passing to the next provider when cases have to be re-assigned.

<sup>1</sup> The Practice Standards for Legal Aid Providers can be found [here](#).

Providers are required to keep records of the instructions they receive from the client, advice given to the client (in writing where appropriate), communications with the client (including reporting letters, emails and texts) and file notes of important conversations by phone or in person.

Provider must also keep a record of what occurred at each court appearance. Copies of all court documents must be kept on file.

### **Excellent (1) and very good (2) results**

Auditors typically identified few, if any, file-keeping issues at this level. Files were generally complete, and the auditors' recommendations for improvement often focused on getting signed instructions from the client and ensuring that written advice and case updates were always sent in reporting letters.

Providers who received high ratings would frequently report to their clients. Auditors commonly recommended that providers include advice about appeal rights and the prospects of success on appeal in their final reporting letter.

*“All of counsel’s files were well maintained with good documentation and correspondence chronologically ordered, enabling an easy understanding of the progression and the management of the file.”*

*“Clients should receive a written record of attendance, instructions taken, advice given and next steps and a closing file letter to the client should be sent on completion – this will be for benefit of both client and provider.”*

*“Whilst it is excellent practice to see that [the provider] does report to the clients at the conclusion of the proceedings, the letter must address appeal rights for the client, timeframes for filing an appeal, likely outcome of an appeal and the procedure of filing an appeal including seeking a grant of legal aid.”*

### **Acceptable (3) results**

Among providers who received acceptable ratings, there was significant variation in the quality of their file-keeping. In some audits significant administrative lapses were identified (such as a complete lack of recorded instructions) in others, the auditor was limited by an incomplete record of what had happened.

Reports often cited a lack of recorded instructions, advice, and/or client reporting as a primary reason for the acceptable rating. Files provided often lacked records of correspondence with the client and the Ministry. Court documents and submissions were

also missing from some files, which affected the ability of auditors to assess the providers' written work.

At the acceptable level these failings were relatively isolated, and often paired with a positive review of the quality of the services provided. Where several substantial file-keeping issues were identified, the result was very likely to be poor.

*"Each file should be kept in good chronological order and should be set out in such a way a new provider could easily pick it up and quickly ascertain what has happened, and why."*

*"While [the provider] obtained good results for clients where that could be assessed, the overall rating reflects a lack of compliance on some files with basic file maintenance requirements set out in the Legal Aid Practice Standards."*

*"If [the provider] had provided [the client] with a final reporting letter there would have likely been no need for [the client] to inquire... as to whether [they] had a protection order in [their] favour."*

*"There are very few reporting letters on the files following court appearances and none of them contained a final reporting letter setting out what happened and whether there were any grounds to appeal."*

#### **Poor (4) and very poor (5) results**

The degree, rather than kind, of any file-keeping issues identified by the auditor usually determined the difference between providers who received ratings of acceptable and poor.

Audits attracting a poor rating typically showed multiple administrative failings, such as an absence of client reporting, a lack of key documentation (judicial decisions, court documents and submissions) and poor records of the advice given, and instructions received. Auditors often commented that providers were putting themselves at risk by failing to record their client's key instructions.

Auditors were often unable to identify the outcome of each case, were much less likely to see written reporting to clients and were often left to piece together poorly managed files.

Providers who received very poor ratings usually had files that were indecipherable or which completely lacked key records. The client's instructions and the legal advice provided was often unknown, as was what occurred in each case. This lack of information seriously affected the auditor's ability to assess the quality and value of the services provided.

*"[The provider] may want to consider the need to have a record completed at every court attendance and keep that on the file. Any solicitor the file would struggle to understand the status of the proceedings for the client."*

*"Much was missing. There were no time records. Records of dealings with the client, meetings, instructions and advice were sparse or non-existent. "*

*"Most of the material in the files was external. There was very little in the files generated from the provider other than very brief notes of outcomes on some documents, and on two files, written sentencing submissions."*

*"Any notes on the file are scribbled on police or probation documents. The notes do not disclose dates of appearances or judges or registrars sitting... No final letter, nor any other evidence of communication with client on the file."*

*"There is no record of any telephone attendances or other meetings with the client or notes of instructions taken or advice given... There are no clear records of instructions, court appearances, hearing time or meetings with client. There are no client reporting letters."*

*"The overall outcome is not clear at all."*

## Invoicing

The value portion of the audit assessment is commonly determined by a comparison of the level of work completed by the provider and the fees and time charged to the Ministry. Key to this assessment is whether the fees and time charged is supported by the providers' files.

To support their invoices providers are required to keep records of the time spent on each case (discussed further in the next section), to ensure that relevant court documents are retained and that notes of what occurred at each court event are present. Without those records it is difficult for an auditor to conduct an accurate value assessment. Consequently, good file keeping and the value portion of the audit assessment are interrelated.

In most case providers' invoices are supported by their files, and the auditor will find that the providers have met or exceeded the value criteria, providing good value for money.

Where the fees and time claimed by a provider is not reflected in their files, this may lead to a finding that they have not met the value criteria. This can significantly impact the overall audit rating, as will evidence that fixed fees have been incorrectly claimed.

Poor overall ratings were usually given when invoicing errors were serious, invoices were not verifiable due to lack of records, or when there was a pattern of misclaiming particular a fee or fees.<sup>2</sup>

Some providers were hampered by the lack of a clear chronology of events on their files. This seriously affected the auditor's ability to assess whether important fixed fees (such as for trial/hearing preparation) were properly claimed.

### **Excellent (1) and very good (2) results**

At this level, auditors rarely identified significant invoicing issues. When the draft report raised a question about a particular fixed fee claim, the provider was often able to clarify the issue before the report was finalised.

In some reports, auditors did find examples of misclaimed fees. However, these were usually the result of administrative errors.

*"All steps that were claimed for were verifiable."*

*"All accounts sent were present on the file and all the events charged for in the accounts were apparent from and evidenced by entries on the time sheets and on the file notes and in correspondence and from the overall file itself."*

*"The provider gives very good value for [their] services – perhaps too good. It might be in [their] best interests to consider if [they are] under-charging and should be submitting more amendments to grant."*

### **Acceptable (3) results**

Invoicing issues were more common among providers who received acceptable ratings. However, invoicing issues were not a significant factor in most audits.

If an auditor identified significant claims that were not supported by the file, they would usually award a rating of no more than acceptable. Incorrect claims for fixed fees were occasional observed and reported on, but were usually isolated to a single file.

<sup>2</sup> Specific guidance for claiming fixed fees is available on the Ministry of Justice [website](#).

At this level the invoices submitted by the provider were sometimes missing, along with documentation confirming what had been paid by the Ministry. In those cases, auditors were unable to assess the value of the services provided, unless the documentation was supplied before the audit was concluded.

*“All legal aid invoices and payment letters should be kept on the file. LAS do not access its own records for audits as the purpose of the audit is to audit the provider’s files. This includes assessing how the provider is financially controlling [their] practice. Very few financial records were provided. Without keeping these records how can the provider know [they are] being paid properly?”*

*“The invoice claimed fixed fees including for sentence indication and sentencing prep – yet those tasks would appear to have been encompassed within the preparation for those hearings on the [other] charges. It is not possible therefore to assess the value rating on this file.”*

#### **Poor (4) and very poor (5) results**

Where invoicing issues did arise the provider was much more likely to receive a poor rating. Audits involving multiple fixed fee issues were very likely to be rated as poor. When invoicing issues arose, it was common for the files to lack records of the fees and time claimed by the provider.

Invoicing issues observed in poor audits generally fell into four categories:

- (1) providers who misunderstood when a specific fee could be claimed and may have incorrectly claimed it multiple times
- (2) providers who were unable to justify the fees they had claimed with reference to the case chronology and the documents on their file(s)
- (3) providers who had innocently claimed an isolated fixed fee in error and admitted their error
- (4) providers who had claimed for actual time, but did not have records of the time spent.

Auditors at this level were also more likely to find that the provider had submitted invoices late, had files which lacked documents to support specific fees (such as written sentencing submissions or Case Management Memoranda in criminal cases) or had claimed for the same task twice.



Where the providers were unable to justify the fee(s) claimed, the Ministry increasingly required the repayment of some or all of the claim in question, after the issue had been escalated to the complaints process.

*“Some of the fees claimed by the provider were either very debatable or were not justified or supported by documents on the files. This is not acceptable. The provider must be able to justify each and every fee [they have] claimed.”*

*“Jottings in a book do not constitute written submissions, as required by the fixed fees... This fee should also be repaid by the provider.”*

*“Some claims did not appear to be in accordance with policy... The provider was invited to provide additional information and was advised that if the claims were not addressed the Secretary may require repayment of the fixed fees.”*

## Other issues identified in 2018-2019 and 2019-2020

### Time recording

A lack of time recording is a recurring audit issue found across the audit spectrum.

The provider contract states that all time spent on each legal aid assignment must be recorded on the file. The Practice Standards are more specific, and state that time records (preferably electronic) must be kept whenever the provider is invoicing based on the “actual time spent”.

A provider claims for actual time spent when they invoice for their time at court (hearing and waiting time) and when they invoice for time (in hours) granted for a specific task following an amendment to grant request.

Encouragingly, audits in the 2018-2019 and 2019-2020 programme showed that providers are increasingly adopting electronic time recording systems and recording time spent on each case as a matter of course. However, the audits also showed that a significant proportion of providers are unaware of the time recording requirements set out in the contract and Practice Standards.

Auditors were also inconsistent in their comments about time recording. Some advised that time recording must take place in all cases. Others that time recording was only advisable, and not strictly required. The auditor comments below show some of the approaches taken.

*“No time recording has been undertaken and is not a strict requirement for set fee accounts. However, counsel has in two of the five files sought further funding and then forward accounts in form 4. [The claim for hours] required counsel to have time recording.”*

*“There were no time recording sheets on any of the audited files which I apprehend is a legacy of each matter being invoiced strictly on a fixed fee basis. However, this practice could be considered by counsel particularly if, as a file evolves, it transpires that there is a need for an Amendment to Grant to be submitted to LAS.”*

*“Formal time records should be kept. Although [the provider] has not applied for any amendments to grant on the files audited, if [they] did not keep formal time records, [they] would not be able to justify any amendments to grant sought. I would recommend [they] look into utilising some formal time recording system.”*

*“There is no time recording on the file. This needs to be done even for fixed fee matters.”*

Given the requirements set out in the contract and Practice Standards, most files will need to include time records of both in and out of court time. Even fixed fee cases will usually involve at least some court time, and it is not always be possible to predict whether an amendment to grant will be necessary ahead of time (see comment 1 above). For that reason, records of all time spent will often be required.

Providers should be encouraged to record all time spent in all cases, rather than in some and not others.

## Privacy concerns

On several occasions auditors found unrelated material on the client files reviewed during the 2018-2019 and 2019-2020 audit programmes.

While these incidents were uncommon, they are a significant privacy concern because if the same file was sent to another lawyer (or indeed the client) then private information about the other person could be accidentally disclosed.

This usually happened when providers sent audit files electronically and mistakenly included material from another case. It continues to be very rare for physical documents to be wrongly attached to a file supplied for audit.

*“There is correspondence relating to a separate client’s matter on the file presented for audit. This is obviously inadvertent, but care should always be taken to ensure all files are kept separate.”*

Similar issues have been identified in the ongoing 2020-2021 audit programme, which suggests some providers have yet to establish robust privacy practices to mitigate the risks of electronic filing.

All lawyers have a professional duty to protect and hold in confidence all information concerning their client. Providers also have obligations under the Privacy Act 2020. These obligations are relevant to legal aid audits because auditors and the Secretary are entitled to consider providers’ compliance with their statutory and professional obligations as part of the audit process. Accordingly, privacy issues which come up during an audit may have a significant effect on the overall rating.

## Private payments

Two providers were sanctioned in 2019-2020 for receiving private payments from their clients. In both cases, the provider invoiced the client for work covered by the legal aid grant. The Secretary concluded the funds were received following administrative oversights and did not cancel the providers’ approvals. The funds were repaid in both cases.

Providers should be aware that the Legal Services Act 2011 requires the Secretary to cancel a provider’s approval if they find that the provider has taken an unauthorised payment from a legally aided person.<sup>3</sup>

Even accidental receipt of a private payment is treated very seriously by the Secretary and may result in immediate referral to the PRC. Providers found to have received private payments in 2019-2020 were referred to the complaints process, receiving first and second notices respectively.

Providers should note that the mandatory cancellation requirement could capture a situation in which a provider has carelessly taken an unauthorised private payment, and accordingly, must not improperly take payments from a legally aided person.

<sup>3</sup> See sections 105 and 103(c).

Where an applicant receives legal aid after having paid privately for a period of work, the provider needs to take care to only bill privately for work that is not subsequently covered by fees charged to the Ministry. The complaints process decisions relating to the providers mentioned included the following comments.

**Decision 1** *“The two identified invoices related to a period of work for which [the provider] was separately paid by the Ministry. [The provider] did not seek or receive authorisation from the Commissioner to receive a top-up payment from the client. Neither were [their] private claims separately authorised by the Act.”*

*“While the auditor has not found anything to suggest that the payment received by [the provider] was anything other than an administrative blunder – it remains a very serious issue. The complaints management policy includes accepting private payments in the most serious category of complaints.”*

**Decision 2** *“That strict approach reflects the need to prevent legally aided persons, often in difficult financial circumstances, being double-charged for their provider’s work. In this instance [the client] was double charged for some tasks and this situation was rectified only after [the provider] was selected for audit.”*

## Protecting the Commissioner’s interests

In the 2018-2019 and 2019-2020 audit programmes several providers failed to protect the Commissioner’s interest in funds or property received as proceeds of proceedings. Most commonly, the provider facilitated the transfer of the funds/property to the client without ensuring that they had repaid their legal aid debt.

Section 107 of the Act requires providers to take all reasonable steps to protect the interests of the Commissioner in proceeds of proceedings. The provider contract and the Practice Standards repeat that requirement.

Providers who are able to hold client funds must ensure that sufficient funds are withheld to pay any outstanding legal aid debts before they are released to the client. Providers who cannot hold client funds are still required to protect the Commissioner’s interest in those funds/property, and must not aid the transfer of funds/property to the client without the repayment of the client’s debt.

If a provider fails to protect the Commissioner’s interest in proceeds of proceedings, the amount owed to the Commissioner may be deducted from any payments owed to the provider.<sup>4</sup> While that power is rarely invoked, providers are exposing themselves to significant risk if they fail to facilitate the repayment of the client’s legal aid debt.

<sup>4</sup> See section 107(4) of the Act.

# Conclusion

The Ministry has limited visibility over the day-to-day services provided by legal aid providers. That is why audits are a key part of the Ministry's quality assurance framework, alongside the legal aid complaints process and the work of frontline staff.

The Ministry is increasingly focused on the usefulness of audits as a learning tool. Issues uncovered during audits are discussed internally to ensure necessary policy changes are made. Audit reports also supplement the published policies available to individual providers such as the Grants Handbook and Practice Standards, which set out the Ministry's expectations.

The 2018-2019 and 2019-2020 audit programmes show that a significant majority of providers are complying with their Ministry obligations at an acceptable level, with half receiving ratings of very good or excellent. The quality of representation observed by the auditors was generally good, even when the overall audit rating was poor. Auditors usually found that the services provided represented good value for money.

This report also shows that audits can help individual providers improve their performance. When providers were re-audited, approximately two-thirds receive a higher overall rating. The report also suggests that on-site audit may offer some advantages over audits conducted remotely, but additional investigation is required to substantiate this.

Although the overall picture is generally positive, the audits reviewed for this report also raised concerning issues. While the main factors affecting audit ratings are consistently the same (service quality, administrative compliance and invoicing) narrower issues such as private payments, providers failing to protect the Commissioner's interests, and the inclusion of external private material in some files, are a concern.

This audit report, along with the providers' contracts and the Practice Standards, clearly sets out the Ministry's expectations for all providers. It is also intended to provide information to the public about the performance of legal aid providers.

The Ministry also takes this opportunity to thank the many providers who provide high quality legal services to New Zealanders in need.

**Ministry of Justice**  
**Tāhū o te Ture**

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