



MINISTRY OF
JUSTICE
Tāhū o te Ture

Terms of Reference

Quality and Value Audits

Table of Contents

SECTION 1 General	3
1.1 Introduction	3
1.2 Statutory authority	3
1.3 Purpose and Scope	4
SECTION 2 Method	6
2.1 The audit programme	6
2.2 Selecting providers for audit	6
2.3 Overview of the audit process	6
2.4 Appointing an auditor	7
2.5 Selecting files for audit	8
2.6 Assessment of files	8
SECTION 3 Audit ratings and risk factors	10
3.1 Rating scale	10
3.2 Key risk factors	10
SECTION 4 Audit criteria	12
4.1 General criteria	12
4.2 Specific criteria Civil /Criminal/Family/ [select one]	13
4.3 Value	14
SECTION 5 Reporting and timeframe	16
5.1 Reporting	16
5.2 Finalising the audit report	16
5.3 Follow up to the audit report	17
5.4 Timeframe	17
SECTION 6 Legal Obligations	18
6.1 Integrity of process and auditing standards	18
6.2 Compliance with audit	18
6.3 Legal professional privilege	18
6.4 Disclosure of information	19
Appendix A Auditing principles	20
Appendix B Rating scales – Quality and value of services	21
Quality of services	21
Value of services	23

SECTION 1 | General

1.1 | Introduction

This document sets out the standard Terms of Reference (TOR) for an audit of the quality and value of legal services provided by a person approved to provide legal aid or specified legal services (provider).

Audits of providers are a key way to ensure that quality legal services are provided to legal aid clients.

The TOR broadly sets out the purpose, scope, methodology, criteria and process for quality and value audits.

The TOR:

- provides an outline of the key criteria against which approved providers are audited and by which performance is measured;
- gives providers an outline of the Ministry's quality and value requirements; and
- provides guidance for auditors.¹

1.2 | Statutory authority

Section 68 (1) of the Legal Services Act 2011 (the Act) sets out the following functions of the Secretary for Justice (Secretary):

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

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

- section 91 (1) of the Act enables the Secretary to audit providers at any time;²

¹ More detailed guidance on the policy can be found in the Appendix to the Provider Manual Part 2 – Auditing and Monitoring of the online Provider Manual.

² This includes the providers who were previously listed/approved by the Secretary or former Legal Services Agency.

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

1.3 | Purpose and Scope

We audit legal services provided under grants of aid made by the Legal Services Commissioner. The purpose of the audit is to assess and review the quality and value of the services provided by a provider under a grant of legal aid.

Audits:

- provide assurance to clients, the public, and key stakeholders about the quality of services provided;
- enable a provider to improve his or her performance; and
- enable the Secretary to take remedial action as necessary.

Audits assess the:

- legal advice and representation provided to the aided person (including the conduct of hearings and/or trials);
- management of cases, including the adequacy of documentation; compliance with the conditions of the grant of legal aid and any amendments to it; and the justification of expenditure of legal aid funds; and
- provider's service delivery systems.

This is to:

- ensure that the legally aided person has received a satisfactory standard of advice and representation;
- ensure that legal aid or specified legal services are provided in an effective, efficient and ethical manner;
- ensure legal aid funds are properly managed and are value for money services;
- assess the reasonableness of the time and amounts claimed by the provider in relation to the nature and complexity of the file;
- ensure providers are compliant with the Act, Regulations, the Contract for Services with the Secretary, Practice Standards, and the Ministry's policies and procedures;
- ensure providers have systems, processes and controls in place to enable providers to be compliant with legislative, contractual, and professional obligations, as well as Practice Standards, policies and procedures;
- ensure providers are compliant with any conditions imposed on their approval/s;

- enhance the performance of providers of legal services through guidance and clarification, and outlining expectations;
- investigate complaints, trends or particular conduct of providers;
- identify concerns in a timely manner and monitor conduct of providers so that remedial action can be taken or action can be taken to prevent breaches and protect the needs of legal aid clients; and
- to assess practise standards and trends for providers generally.

SECTION 2 | Method

2.1 | The audit programme

The Annual Audit Programme (the audit programme) as noted in the Ministry's Statement of Intent, provides that audits are to be performed over a twelve month period coinciding with the Ministry's financial year of 1 July – 30 June.

2.2 | Selecting providers for audit

Providers are selected for audit at random, by an assessment of risk profile, or other form of profiling. Risk profiles are determined by looking at:

- the total amount paid to a provider in the previous financial year (attained by ratings of high, medium or low)
 - over \$200,000 high, \$100,000 to \$199,000 medium, and less than \$100,000 low;
- the number of legal aid files assigned during a financial year;
- the percentage increase in fees or number of legal aid files over two consecutive years;
 - over 25% high, 10-24% medium, under 10% low;
- the number of substantiated complaints over a five year period;
- any adverse judicial comments;
- recent progression in Provider Approval Level or approval in a new area of law; and
- specific concerns identified as a result of a previous audit report, assurance checking, or as a result of the complaints management process.

2.3 | Overview of the audit process

Once a provider has been selected for an audit, we will inform the provider of:

- the reason for the audit (i.e. risk profile information);
- the scope and focus of the audit;
- the nature of the audit (whether it is an off-site or on-site audit);
- the location and timing of the audit (to be determined after liaison with the provider if the quality and value audit is to be conducted on-site);
- any relevant health and safety procedures to be followed;
- the anticipated duration of the audit visit (if the quality and value audit is to be conducted on-site);

- the timeframe for the audit;
- the audit process; and
- the client files to be provided for audit. The provider will be given a minimum of 10 working days to prepare/supply the files for audit. The files will be returned to the provider after the audit.

In conducting the audit, the auditor will:

- review client files, papers, and any relevant documentation;
- request further information where required;
- contact us for any clarification of information as the audit progresses; and
- provide a draft audit report to the Secretary.

The Ministry will provide the draft audit report to the provider who will have 10 working days to respond to the draft report. The Ministry will then forward the provider's response to the auditor who will assess the response and finalise the audit report.

On-site audit process

During an on-site audit, the provider is expected to be present at the audit location.

An on-site auditor may interview the provider and any other people nominated by the provider in relation to any matters arising from the client files selected for audit. Prior to conducting the interview, the auditor will advise the provider of the timing and estimated duration of the interview, and will provide any necessary clarification as to the scope of the interview.

The interview is an opportunity for the provider to provide information to the auditor regarding the files selected for audit. During the interview, the provider may provide any information they consider relevant to assessing the files; the provider is not constrained by the questions asked by the auditor. The interview will be fair and impartial.

2.4 | Appointing an auditor

The Secretary generally appoints auditors who are lawyers with:

- a minimum of seven (7) years post admission experience (preferably in the areas of law of the allocated audit);
- experience at litigation 3 level or equivalent;
- audits of their own work rated as excellent or very good (where relevant);
- no recent upheld complaints about their provision of legal services; and
- no conflict of interest with the provider being audited.

Our practice is to generally assign auditors who do not work or reside in the same region as the person being audited.

In an off-site audit, an auditor will be appointed once the files have been received. In an off-site audit we generally do not reveal the identity of the auditor to the provider. This is to uphold the integrity of the audit.

In an on-site audit the auditor is appointed when the provider is notified of the audit. The provider will be informed of the identity of the auditor.

2.5 | Selecting files for audit

We select seven (7) legal aid cases for audit:

- that have been or are assigned to the provider;
- that include recent activity and provide a reasonable spread of the provider's activity in terms of matter type and cost of services; and
- where the fees claimed are at least \$1,000.

For Criminal, Civil, Family, Mental Health and Refugee matters, the files will generally have been closed within the previous 24 months.³

We may seek the event list from the relevant Court and forward that information to the auditor.

We may select files from the current year (that may still be open) where the audit is a follow up from a previous audit i.e. to identify whether the provider has implemented practices or made changes to their practice, or the provider has an insufficient number of files from the previous 12 months.

If a provider has insufficient files, or insufficient files costing over \$1000, we may select fewer than seven files for audit.

2.6 | Assessment of files

The aim of the audit is to provide an assessment of the quality and value for money of the services provided based on the information contained in the client file. It is expected that a client file will generally contain⁴:

- all correspondence, including correspondence with the Ministry in relation to legal aid and with the client;
- a copy of all court documents filed, served or issued;
- file notes of all material telephone conversations and personal attendances;
- records of all court attendances;
- receipts and records of expenditure, including records of all time spent by the Provider/s and any non-lawyer/s;
- records of any disbursements; and

³ Closed is defined as 'closed' according to Ministry records, however we may look at open files that have not had any activity for a period of time.

⁴ This is consistent with clause 4.20 of the previous Contract for Services and clause 4.11 of the current Legal Aid Provider Contract for Services.

- an index of research, draft documents and disclosure documents (where not retained on the file).

It is expected that the provider will collate all relevant file documentation, irrespective of whether it is stored in electronic or hardcopy format, and make it available to the auditor.

Auditors must assess five (5) client files out of the seven (7) client files unless advised otherwise. However, auditors may audit more than the required five (5) client files if they identify systemic issues or have other concerns.

Where there is insufficient information on the client file, the auditor may ask the Ministry to seek further information from the provider or to tell the provider what is expected to be provided and give the provider time to provide further information.

The Ministry does not open or review the provider's client files at any time, consequently the auditor provides a detailed explanation when referring to documents or particulars on a client file.

The quality of services for all relevant elements of a case are reviewed and assessed against the:

- general responsibilities of a provider in relation to legal aid cases; and
- specific responsibilities of a provider in relation to the area of law.

This results in:

- an individual assessment of each legal aid case based on an evaluation of the file against the audit criteria; and
- an overall assessment and rating for the files audited.

Auditors may not be able to complete an assessment where:

- the file has been reassigned during the case to the provider under audit. (Note: this does not include where an approved provider has been involved on behalf of a lead provider); more than two files contain insufficient information, such that they cannot be effectively assessed. The auditor may in these circumstances, request more files for audit; and/or
- where information on the file provided for audit is missing or the file is incomplete the auditor may request the missing information.

SECTION 3 | Audit ratings and risk factors

3.1 | Rating scale

The table below provides a key for the rating of each file and the overall rating of the legal services provided.

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

Appendix B provides a detailed description of characteristics of each rating category.

The auditor will not automatically arrive at the overall rating simply by averaging the scores on the individual files, although in some instances the overall rating is likely to be the equivalent of the average of the scores on those individual files. The essence of the audit process is that auditors use their skill, experience and training to inform the overall rating of the provider from the trends and patterns they see on the individual files.

The fundamental nature of auditing is that it is the judgement of an experienced practitioner. The auditing methodology and framework enables auditors to make a judgement on how they think the work of a provider is managed, supervised and ultimately produced as a result of seeing the work in a category of law on the individual files. Their function is to assess the overall quality of work from the sample of files.

3.2 | Key risk factors

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

- poor management of legal aid funds;

- unsatisfactory/inadequate service-delivery systems;
- unsatisfactory/inadequate level of legal services;
- poor value for money for the client, government and taxpayer;
- non-compliance with:
 - legislative, contractual and professional obligations;
 - Ministry policies, procedures and practice standards; and
- complaints about the provider and mechanisms for dealing with any complaints.

SECTION 4 | Audit criteria

4.1 | General criteria

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

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

4.2 | Specific criteria | Civil /Criminal/Family/ [select one]

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

	Criteria		Assessment for each file reviewed					Comments
			1	2	3	4	5	
Case	a. Instructions and preparation	i. Understanding of client						
		ii. Understanding of issues						
		iii. Adequate research						
		iv. Alternative dispute resolution						
Client	b. Conduct and advice	i. Advice correct						
		ii. Advice timely						
		iii. Quality of written material						
		iv. Use of resources						
		v. Settlement options						
		vi. Advocacy in court						
		vii. Level of expertise						
		viii. Supervision						
	c. Conclusion	i. Advice on judgment						
		ii. Settlement						
Court or Tribunal	d. Information, evidence and submissions	i. On fixtures						
		ii. On merits						
		iii. On progress						
		iv. Written record						
		v. Plain English						
Conduct	e. Process requirements	i. Properly served						
		ii. Obligations met						
Legislative obligations	f. Legal Services Act 2011	i. Notified Legal Aid - of any change in the client's address, or any increase in their income or assets (disposable capital)						
		ii. Notified client of the potential costs of services for the proceedings for which aid is sought						
		iii. Protected Legal Services Commissioner's interests - in relation to charges and proceeds of proceedings						
		iv. Notified client that a repayment may be required						
Professional	g. Lawyers and	i. Conflicts of interest						

	Criteria		Assessment for each file reviewed					
			1	2	3	4	5	Comments
obligations	Conveyancers Act 2006 and obligations under Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008	ii. Duty as Officers of the Court						
		iii. Reasonable fees						
		iv. Other obligations						
Ministry obligations	h. Contract	i. Obligations met	Ministry to follow up					
	i. Practice Standards	i. Obligations met	Applicable from September 2012					
	j. Policy	i. Applications and associated processes						
		ii. Eligibility						
		iii. Debt management						
		iv. Granting decisions						
v. Reconsideration/review								
Overall assessment of files	<i>State the overall rating for the files from a rating of 1-5 and provide comments on the overall rating and specific ratings</i>							

4.3 | Value

Criminal (state yes, no or can't assess)	1	2	3	4	5
a) Was this a fixed fee case?					
b) If not a fixed fee case, was the time charged reasonable for all providers who worked on the case and verifiable against the time records?					
c) Was an amendment to grant sought for additional work (whether fixed fee or not)?					
d) Was it reasonable to seek an amendment to grant?					
e) Were providers or others who worked on the case paid in a timely manner?					
f) Was a cost management tracking system used and was it used appropriately?					
g) Were any disbursements incurred appropriate and verifiable against the time records?					
h) Did the provider use resources effectively, e.g experts?					
i) Was a reasonable approach taken on the case compared to other similar cases?					
j) Was there a change in plea?					
Overall assessment of value of files	<i>State the overall rating for the value of the files from a rating of exceeds, meets, does not meet or can't assess, and provide comments on the overall rating</i>				

Family / Civil (state yes, no or cannot assess)		1	2	3	4	5
a)	Was the application justified and were there prospects of success (where applicable)? (section 10(4)(d) Legal Services Act 2011)					
b)	Was this a fixed fee case?					
c)	If not a fixed fee case, was the time charged reasonable for all providers who worked on the case and verifiable against the time records?					
d)	Was an amendment to grant sought for additional work (whether fixed fee or not)?					
e)	Were providers or others who worked on the case paid in a timely manner?					
f)	Was a cost management tracking system used and was it used appropriately?					
g)	Was it reasonable to seek an amendment to grant?					
h)	Were any disbursements incurred appropriate and verifiable against the time records?					
i)	Did the provider use resources effectively, e.g experts?					
j)	Was a reasonable approach taken on the case compared to other similar cases?					
Overall assessment of value of files	<i>State the overall rating for the value of the files from a rating of exceeds, meets, does not meet or can't assess, and provide comments on the overall rating</i>					

SECTION 5 | Reporting and timeframe

5.1 | Reporting

Following the assessment of client files, the auditor prepares a draft audit report. This report details the key findings extracted from the individual files, with particular emphasis on trends and patterns identified across the sample. The auditor will consider all the findings and all pertinent information, as evidenced from all the client files and will determine an overall rating, which is recorded in the final report.

The auditor submits a report in a standardised format that includes:

- an overall rating and conclusions;
- method - objectives, scope, approach and criteria;
- key audit findings/observations; and
- key recommendations, including any corrective action.

The auditor will also highlight in the audit report any concerns or findings that the auditor thinks may warrant more detailed investigation.

For each client file the auditor will provide;

- an outline of the legal aid case (i.e. charges laid or type of proceedings);
- details of any items not contained within the file which you would reasonably expect to see (such as time records, file notes, client care information and submissions/memorandum of counsel);
- specific details of the areas of satisfactory practice;
- specific details of any inadequacies within the advice given or documents produced; and
- a summary of the quality and value of services provided.

5.2 | Finalising the audit report

On completion of the audit, the auditor sends a draft report to the Ministry.

We will notify the provider that the audit has been completed, and provide a copy of the draft audit report.

The provider will be offered an opportunity to respond to the draft audit report within 10 working days. The Ministry will forward any provider's response to the auditor, who will finalise the audit report, taking the provider's response into account.

5.3 | Follow up to the audit report

Depending on the findings/recommendations, we may seek a response from the provider in accordance with the Complaints Management process.

We may also undertake a review or another audit to determine whether agreed recommendations have in fact been implemented.

5.4 | Timeframe

Audits are generally expected to be completed within eight (8) weeks, from the initial selection of files, appointment of the auditor and notification to the provider, to the return of files to the provider.⁵

Generally, the auditor will be appointed and the approved provider informed at least ten (10) working days prior to the commencement of the audit unless there are particular circumstances that mean that this timeframe cannot be met.

⁵ In exceptional circumstances, the Ministry may on behalf of the Auditor agree to an extension.

SECTION 6 | Legal Obligations

6.1 | Integrity of process and auditing standards

To ensure integrity of process, we:

- send provider files directly to the auditor. Ministry staff do not read or review the contents of client files at any point in the audit process or subsequent follow-up;
- ensure that all findings, opinions, and recommendations are based on established and accurately understood facts, the relevant law, and applicable standards;
- act openly and transparently – subject to the need to respect personal privacy and observe any other obligations of confidentiality; and
- observe the principles of natural justice.

We are committed to improving the quality of legal aid services and we manage audits in accordance with best practice auditing principles.⁶

6.2 | Compliance with audit

Where the provider fails to cooperate with the appointed auditor⁷, the Secretary will, on behalf of the auditor, notify the approved provider in writing, that the required level of cooperation is not being provided. The Secretary may under section 92 (4) of the Act suspend payments of any legal aid claim currently lodged until the Ministry is satisfied that the provider is cooperating.

The provider may be liable on conviction to a fine not exceeding \$5,000 for continuing failure to cooperate which is an offence under section 113 of the Act.

6.3 | Legal professional privilege

Section 109 of the Act provides that legal professional privilege does not apply to communications between a provider and a legal aid client for the purpose of audit. This means that a provider must supply legal aid files, records, documents, or statements or information as required for the audit.

Information that is subject to legal professional privilege, and produced for the purposes of an audit or investigation, must not be used in:

- any proceedings against the client, or

⁶ See The Auditor General's Auditing Standards available at <http://www.oag.govt.nz/2008/auditing-standards/docs/auditing-standards.pdf>.

⁷ As the Ministry requests files on behalf of the auditor from the provider, this includes cooperating with the Ministry.

- any way that is detrimental to the client.

6.4 | Disclosure of information

We will only disclose information from any audit in accordance with the principles of the Privacy Act 1993 (Privacy Act) and the exceptions in the Official Information Act (OIA).

We will hold finalised reports in the provider's file and these will only be accessible by Ministry staff to fulfil their responsibilities and released under the OIA. Where that occurs, we will delete any reference that might identify the approved provider or aided person except in exceptional circumstances that might involve the public interest.

Appendix A | Auditing principles

In conducting audits, the following principles must be observed by all auditors:

- to act professionally, report findings accurately and in a consistent and unbiased manner and undertake audits in accordance with our requirements and procedures;
- to endeavour to undertake the audit with the least inconvenience possible to the provider and firm (relevant where audit is onsite);
- to provide any suggestions for improvement that might be useful;
- to respect legal professional privilege and only use or disclose information received during the course of the audit for the purpose of the audit;
- to undertake auditing work that is within your abilities, qualification and competence;
- to avoid any activity or personal relationships that may be seen as a conflict of interest or that may influence your judgement;
- to ensure that any activity entered into does not conflict with our best interests or prevent the objective performance of your function;
- to adhere to the requirements of legislation, regulations, and best practice standards;
- to avoid promoting or representing any business interests that provide practise management goods or services whilst conducting audits;
- not to accept any inducement, commission, gift or any benefit from any interested party;
- to act in a way that protects our reputation; and
- to co-operate fully with any inquiry about the audit and the provider's performance.

Appendix B | Rating scales – Quality and value of services

Quality of services

The table below provides a detailed description of characteristics of the rating categories. Each file is unlikely to evidence all the characteristics of a specific rating. The auditor is not restricted in the way he/she assesses the file. The characteristics are provided as a guide to develop an understanding of each rating and how one rating differs from another so as to promote overall consistency between auditors. Auditors are able to use the experience of running their own cases and supervising the cases of others to assess the rating category.

QUALITY ASSURANCE RATING SCALE FOR EACH FILE AND OVERALL RATING FOR THE LEGAL AID PROVIDER	
Rating	Characteristic
Excellent – 1	<ul style="list-style-type: none"> • there are controls such as checklists to show the file is being managed effectively • clients’ instructions are fully and appropriately recorded • communication, advice and other work are tailored to each individual client’s circumstances • clients are all advised correctly and in full • all issues are progressed comprehensively, appropriately and efficiently • there is a demonstration of in-depth knowledge and appreciation of the wider context • there is excellent use of tactics and strategies, demonstrating skill and expertise, in an attempt to ensure the best outcomes for clients • the provider adds value to their cases, taking a fully proactive approach • accurate and complete record of documentation on the file (i.e. all relevant documents, correspondence received and correspondence sent, court documents, file notes, records of all attendances and correspondence that relates to the legal aid matter) • there are no areas for major improvement
Comments	<ul style="list-style-type: none"> • consistently demonstrates a high level of service for all audit criteria in all files
Very good – 2	<ul style="list-style-type: none"> • clients’ instructions are appropriately recorded • advice and work is tailored to individual client’s circumstances • clients are advised correctly and in full • issues are progressed comprehensively, appropriately and efficiently • tactics and strategies are employed to achieve the best outcomes for clients • accurate and complete record of documentation on the file (ie all relevant documents, correspondence received and correspondence sent, court documents, file notes, records of all attendances and correspondence that relates to the legal aid matter) • the provider adds value to cases and takes a proactive approach.
Comments	<ul style="list-style-type: none"> • consistently demonstrates a very good level of service for most audit criteria in all files that exceed a satisfactory standard • generally no substantive recommendations or suggestions made. Sometimes more than just procedural

Acceptable– 3

- clients' instructions are appropriately recorded
- there is adequate but limited communication with the client
- the advice and work is adequate although it may not always be extensive and may not deal with other linked issues other than the presenting issue
- adequate record of documentation on the file
- there may be areas that the provider will need to address in order to progress towards very good (2) or excellent (1)

Comments

- generally demonstrates a satisfactory level of services for most audit criteria
- where the auditor cannot normally make an assessment of satisfactory due to the level of 'can't assess' the auditor will make an assessment on the information available or seek further files/documentation
- the auditor may suggest improvements that would help the provider to improve performance any recommendations may be taken into account in any subsequent audit

Poor – 4

- information is not being recorded or reported accurately
- communication with the client is sometimes of poor quality
- the advice and other work is inadequate
- there are gaps in the file
- some cases are not being conducted with reasonable skill, care and diligence
- the timeliness of the communication, the advice or other work is sometimes inadequate
- inadequate record of key documentation on the file
- there are lapses below the required standard

Comments

- demonstrates a level of service that is consistently below satisfactory across the audit criteria for a number, if not all the files
- work has been conducted below the standard which clients are reasonably entitled to expect from a legal aid provider
- where an assessment of 'poor' is made, this does not mean that the provider is not fit to continue to provide services but that he/she must implement key recommendations made by the auditor
- a very poor score on any one element of a case may not result in a 'poor' rating in all cases
- in some cases, a below satisfactory score on a significant criteria may result in a poor overall rating due to its magnitude
- where the auditor cannot make an assessment due to a very high level of 'can't assess' on cases, when it would be expected that sufficient documentation would exist
- the auditor may take into account the forum or the proceedings and expectations the auditor may take into account any judicial comments

Very poor– 5

- information is not being recorded or reported accurately
- communication with clients is often of poor quality
- there are significant gaps in the file or records are non-existent
- cases in general are not being conducted with reasonable skill, care and diligence
- the timeliness of the communication, the advice or work is often inadequate

- inadequate record of documentation on the file
- there is a detrimental service to clients, or there is no meaningful service at all, or there is a service that leads to potential prejudice for the client

Comments	<ul style="list-style-type: none"> • clearly demonstrates that the level of services across a number of audit criteria for a number of cases was of a standard that is not satisfactory • work has been conducted substantially below the standard which clients are reasonably entitled to expect from a legal aid provider • a serious breach of a significant criterion could result in this ranking e.g. professional negligence • where the auditor cannot make an assessment due to a very high level of 'cannot assess' on cases when it would be particularly expected that sufficient documentation would exist, then this rating could apply • the auditor will make recommendations which are necessary to ensure that the provider is able to improve and subsequently attain an 'satisfactory' rating
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Other ratings

- Cannot assess—"C/A"** • relevant documentation is absent, minimal, or so confused that an assessment cannot be made
- Not applicable—"N/A"** • cases may have aspects that do not apply, eg no hearing

Value of services

The rating scale below summarises the ratings that the auditor can award when assessing the value of services.

The auditor assesses each legal aid case for value for money using the questions for each law type against a rating of yes, no or cannot assess (see section 4.3).

Where the auditor determines that value for money has not been provided, the auditor will provide sufficient details to enable a clear understanding of the provider's performance and refer to specific files where appropriate.

Value Assessment	Rating	Applicable where	Comments
Exceeds value assessment	Yes / No	<ul style="list-style-type: none"> • very effective use of public resources • protection of Ministry interests 	takes into account the value to the client and the use of resources to achieve the outcome
Meets value assessment	Yes / No	<ul style="list-style-type: none"> • effective use of public resources • protection of Ministry interests 	
Does not meet value assessment	Yes / No	<ul style="list-style-type: none"> • ineffective use of public resources • ineffective protection of Ministry interests 	
Unable to assess	CA	<ul style="list-style-type: none"> • where relevant documentation is absent, minimal, or so confused that an assessment cannot be made 	

