

# High quality legal aid services

## Practice themes from 2015-16 audits

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## Executive summary

Each year Legal Aid Provider Services manages an audit programme for legal aid lawyers. Experienced legal practitioners conduct the audits by reviewing selected cases based on a legal aid lawyer's files and records. Completed audits receive a rating, measured on a scale ranging from one to 5, with one being excellent and 5 being very poor. Seventy-six legal aid lawyers were audited in 2015-16; 86% were rated acceptable or above, reflecting the high quality of service provided to legal aid clients.

**In their analysis, auditors identified 5 main practice themes:**

1. Client outcomes
2. Communication and meeting the needs of clients and other justice system users
3. Quality of legal advice and representation
4. Value for money
5. Office systems and record-keeping practices that support the lawyer's business

Audits that were rated excellent or very good maintained a consistently high performance across all practice themes. Excellent and very good client outcomes reflected a combination of legal skill, client focus and organisational aptitude.

Audits that were rated acceptable often demonstrated very good or excellent characteristics but fell short in one or more areas.

Audits rated poor or very poor were weak in a number of practice themes and sometimes failed to display an active focus on the client and file organisation.

The quality of legal aid services is also assured by the complaint investigations service. To find out more about complaints received in 2015-16, see Appendix 1.

## Audits of legal aid lawyers

Each year Legal Aid Provider Services manages an audit programme for legal aid lawyers. This is part of the quality assurance framework for legal aid services under section 91 of the Legal Services Act 2011.

The Ministry of Justice sets the number of audits to be completed in its annual Statement of Intent. Our target for the 2015-16 financial year was 70 or more audits; we completed 76. This was around 4% of the 1655 lead legal aid lawyers providing legal aid as at 30 June 2016.

Legal aid lawyers are selected for audit using a statistical tool based on a combination of factors, including:

- high legal aid earnings
- records of substantiated complaints and previous unfavourable audit results

Lawyers who attain good audit results are generally removed from the pool to be audited.

Experienced legal practitioners conduct the audits by reviewing the lawyer's files and records of selected legal aid cases. For each lawyer we select 7 completed legal aid cases of a variety of types. Before the audit report is finalised, lawyers have an opportunity to comment on the draft report. Their comments, and any additional material provided are passed to the auditor for consideration.

Completed audits receive a rating; this is an overall judgement on the quality and value of legal aid services supplied by the lawyer. Ratings are on a scale ranging from one to 5, with one being excellent and 5 being very poor. Auditors endeavour to provide feedback on suggested improvements, based on their experience as auditors and legal practitioners.

The [Audit and Monitoring Policy](#) and the [Audit Terms of Reference](#) have more details about the process.

### Legal aid complaint investigations service

The quality of legal aid services is also ensured by the complaint investigations service. To find out more about complaints received about legal aid lawyers during 2015-16, see Appendix 1.

## 2015-16 audit results

In 2015-16 we conducted 76 audits of legal aid lawyers working at the private bar and in the Public Defence Service. Figure 1 presents the quantitative results of these audits.

Figure 1 – 2015-16 audit results

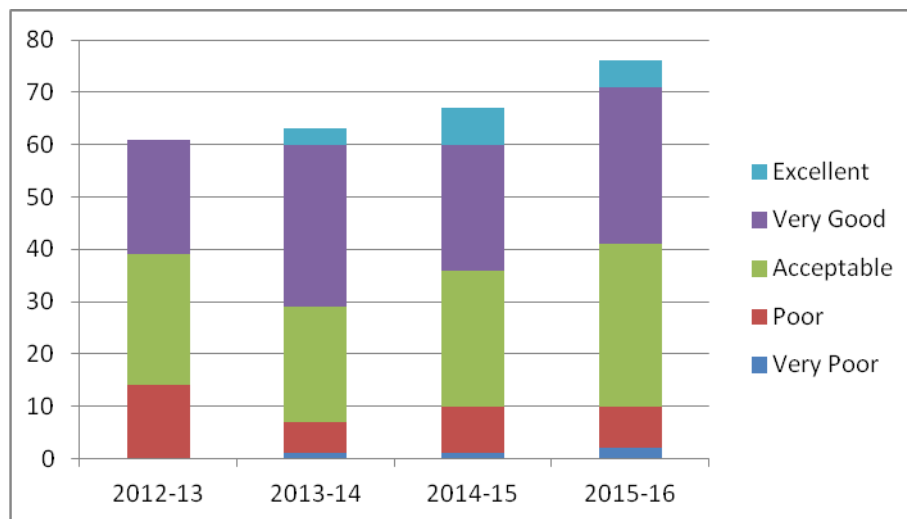
RATING	RESULTS
Excellent	5
Very Good	30
Acceptable	31
Poor	8
Very Poor	2
<b>Total</b>	<b>76</b>

Sixty-six of 76 legal aid lawyers audited in 2015-16, or 86%, were rated acceptable or above; this was indicative of the high quality of services provided to legal aid clients.

We're working closely with lawyers who need to improve their services to address specific aspects of their practice and to set timeframes for their improvement. Follow-up actions can include re-audits and where appropriate, formal notices or sanctions.

Compared to previous years' results, there has been a trend towards improvement. Four years ago, 77% of legal aid lawyers were rated acceptable or above. Figure 2 presents a year-by-year comparison. The number of legal aid audits has also grown over the past 4 years.

**Figure 2 – Audit results 2012-16**



### Qualitative audit results

Audit reports are a rich database of qualitative information about the delivery of legal aid services.

From the 2015-16 audits, we analysed all the qualitative comments in all result categories — excellent to very poor.

We used qualitative data analysis methods to identify main practice themes. We collated the auditor comments under the main sections of the audit report template. We then reviewed the dataset looking for frequently occurring comments and patterns.

The following section of the report provides a holistic view of positive and negative practices. Comments in blue boxes are direct quotes from auditors, which are particularly illustrative of the practice themes.

As a result of publishing the report, we anticipate that legal aid lawyers will be able to identify potential areas for improvement.

This approach contrasts with the 2015 audit summary report which focused on the audit reports with excellent and very good results in order to provide positive feedback to the legal profession. The 2015 report is available on [the Ministry of Justice website](#).

### **What makes an excellent, or very good, audit result different from an acceptable or poor result**

In general, lawyers whose audit files were rated excellent or very good demonstrated a dedication to their client's matter and showed an excellent understanding of the legal issues related to their client's situation. They were focused on details and processes, a characteristic that was evident in the quality and clarity of documentation in their files.

Excellent and very good audit files demonstrated a focus on organisation. Good client outcomes were noted as flowing on from the combination of legal skill, client focus and organisational aptitude. Excellent or very good audit files maintained consistently high performance across all practice themes, differentiating them from acceptable or poor audit results.

Audit files with an acceptable result often demonstrated characteristics seen in very good or excellent results, but fell short in one or more areas. The lawyers generally demonstrated technical competence and dedication to their clients but may have demonstrated a lower quality of file maintenance or communication.

Audit files with a poor or very poor result were often weak in a number of practice themes and failed to display an active focus on file organisation, client focus and/or an attention to detail.

## **Practice themes identified in audits**

Analysis of the 76 audit reports identified 5 main practice themes.

1. Client outcomes
2. Communication and meeting the needs of clients and other justice system users
3. Quality of legal advice and representation
4. Value for money
5. Office systems and record-keeping practices that support the lawyer's business

### **THEME ONE – Client outcomes**

#### *Excellent and very good results*

The audits rated excellent and very good were those describing the practice of highly-skilled legal aid lawyers who achieved the best possible outcome — helping their clients to access justice.

Auditors considered a good outcome was when a legal aid lawyer got the best possible result for the client considering the facts of their case. A depth of understanding of the facts of the matter was often cited, as was the strength of advocacy. A correlation between an effort made on the file and the outcome for the client was often mentioned.

The quality of work is very high and good results often flow to the clients as result.

Best possible outcomes were due to high-quality, efficient professional processes and attributes working in combination to achieve high-quality results.

#### *Acceptable results*

Auditors rated as acceptable those audits from competent legal aid lawyers who generally achieved good outcomes for their clients. The skill and efficiency of these lawyers was demonstrated by the work present on file. Factors that prevented them getting a higher rating often related to communication issues or file maintenance.

On the whole the provider was competent and efficient and providing good service and value for money. Some results were good.

#### *Poor and very poor results*

For most audits rated poor, specific obligations to clients weren't met. For example, client care information wasn't sent. On some very poor files, the lack of documentary evidence made it impossible for the auditor to determine the outcome for the client. However, in some audits with poor results, good outcomes were sometimes obtained for clients.

Provider does not appear to be complying with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 in that he does not appear to be providing Letters of Engagement and client care information to his clients. This has to be remedied immediately.

## **THEME TWO – Communication and meeting needs of clients and other justice system users**

#### *Excellent and very good results*

In excellent and very good audits, there was regular, clear and full communication with clients. Lawyers advised their clients of progress every step of the way and their client correspondence was efficient and prompt.

Auditors noted that good communication with clients was informative, with enough detail to answer real or likely questions from clients as in the following example.

Extremely professional in her dealings with her clients. On all five files audited there was a desire to keep the client fully informed as to disclosure issues, court attendances and the procedure around the same, settlement negotiations, and sentencing outcomes.

Good written client communication was appropriate to the client and tailored to their needs. The tone and the language was appropriate. Correspondence, including letters of engagement and client care letters, was well suited to clients in terms of language – it was easy to understand.

In excellent or very good audit reports, quality was also described in terms of meeting the needs of clients and other justice system users.

Clients were handled appropriately according to their individual needs and characteristics. By skilfully representing vulnerable people, lawyers add value to the justice system.

... [the lawyer] was consistently professional in her dealings with her clients. Her response to her clients showed the quality of her care and commitment to her clients.

High-quality practice was typified by excellent interactions with other justice system users, including meeting the needs of Courts and Police. Communication quality between lawyer and other justice system users strongly contributed to efficient progression of clients' matters. Similarly, effective and courteous relationships with other justice system users contributed to good outcomes reached for clients.

Very good follow-up of necessary psychiatric reports and liaison with Crown, Court and Forensic Mental Health services [...] Early approach to police to resolve matter.

#### *Acceptable results*

Audits rated acceptable sometimes had incomplete or patchy client care documentation or no final reporting letters on file. Auditors noted some clients weren't kept fully informed as the matter progressed.

This irregular client communication was also reflected in a failure to keep adequate records of communication with other parties. Auditors could only infer what advice was given from the outcomes of the matter and the progress of the file.

However, several acceptable audits had a similar excellent level of client communication as audits rated very good or excellent, and auditors noted full and regular reporting with efficient communication that was tailored to clients' needs.

Routinely sends a letter to the client informing them that she has been assigned and encloses a client care/letter of engagement. This is good practice. The client care/letter of engagement is well drafted.

In some acceptable audits, the demonstrated ability to meet the needs of clients and other justice system users was mixed. In some cases, lawyers rated very highly and auditors noted regular and full reporting to clients. In others, lawyers fell short and there wasn't any record of client communication and keeping the client fully informed.

However, some acceptable audits had a very good standard of communication between the lawyers and other justice system users.

... consistently courteous in his dealings with the people he has to engage with including his clients, Court staff, prosecutors, mental health professionals and so on.

Unfortunately, in several other audits, it was impossible to assess the quality of the interaction between the lawyer and other justice system users because of a lack of documentary evidence on file.

#### *Poor and very poor results*

Most audits rated poor or very poor had missing or incomplete client correspondence; client care and/or reporting letters weren't present. On these audits, auditors often noted a corresponding failure in file maintenance and other record-keeping obligations.

There a complete absence of any written communication with the clients or provision of client care materials, a letter of engagement or a record of the conclusion of the case.

Client communication wasn't maintained and final reporting letters were rarely sent.

Rarely reports to his clients. There were no final reporting letters on any of the files. Clients are entitled to receive reports in writing unless they do not wish to receive such letters or it is inappropriate to do so. Many lawyers write to their clients routinely after every material Court appearance where appropriate to do so. A degree of discretion can be exercised. A copy of any decision by a Judge should be given to the client.

These audits also showed limited evidence of communication with other stakeholders. This made it difficult for auditors to assess the quality of interaction with other justice system users.

### **THEME THREE – quality of legal advice and representation**

#### *Excellent and very good results*

For audits rated excellent and very good, experienced lawyers delivered a high quality of advice and representation, carefully identified and analysed the legal issues, and exercised good judgement. Auditors commented positively on timely progression of matters in line with client instructions, and noted positive instances of early resolution where it was appropriate.

Lawyers with excellent and very good results acted in an appropriate, tailored manner, in light of their overall knowledge and experience. They managed clients well and were thorough in their approach.

The quality of the work exhibited by all five files audited was impressive. The practitioner shows a clear understanding of the client's factual circumstances and the applicable law and invariably conducts argument on the client's behalf in a very prompt and efficient manner progressing through to completion in a very expeditious fashion. Pleadings were thorough and well written.

Such lawyers were also proactive in their management of the overall process for the case and possessed strong organisational skills as in the following excerpt.

The provider is a strong advocate for her client. She is proactive in obtaining the best possible outcome for her clients. Very prompt action on all files resulting in an efficient and cost effective resolution of disputes for all clients. Sound advice and good advocacy for all clients demonstrated on each file audited.

Good quality legal research was reflected in suitable advice to clients and high quality written submissions. Auditors commented favourably on legal aid lawyers undertaking appropriate legal research and noted when the research was retained on file.

#### *Acceptable results*

In some acceptable audits, there was a high standard of representation and quality of court documentation. On some, auditors noted evidence of the lawyer's skill, diligence and care.

Negotiation and mediation skills were mentioned in several reports and efficiency and timeliness were identified as common factors on well-conducted files.

An effective advocate for her clients and provides clear and timely advice to her clients on the whole.

Acceptable audits sometimes exhibited a lower quality of documentation present on file. In one case, these deficits reduced the rating of the audit from very good to acceptable.

Some good specific disclosure requests. Inferior written submissions. The submissions have plenty of room for improvement. Better quality needed for memoranda.

#### *Poor and very poor results*

A few poor audits had a good standard of advice and representation. However, more than half of poor audits were deficient in the advice and representation provided. For example, one audit noted a provider failing to manage a conflict of interest situation effectively. Auditors also commented on legally inaccurate and misleading submissions found on the files.

The sentencing submissions, despite the provider's response that, in essence they are helpful to the client, are not justified in each case. They are sparse, set out basic facts, contain very little case law and there is an absence of prosecution submissions. The material could easily have been given orally.

There was also a pattern of inappropriate case management, for example, the practice of electing jury trials in situations where they may not have been warranted.

### **THEME FOUR – value for money**

#### *Excellent and very good results*

An important component of the quality and value of audits is an assessment of the extent to which legal aid lawyers provide value for money to the taxpayer.

Auditors examine the files to see whether the work, for which the lawyer has submitted an invoice, was justified. In audits rated excellent and very good, there was a clear link between fees charged, invoices and time records submitted to Legal Aid Services, and work undertaken. Auditors described lawyers with excellent and very good audit results as 'excellent', 'comprehensive' and 'detailed', with respect to invoicing and supporting their invoices with evidence.

Auditors also considered invoicing practices in relation to the fee schedule (if appropriate) and commented positively where the lawyer acted responsibly in securing an amendment to grant.<sup>1</sup>

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<sup>1</sup> A large proportion of legal aid is paid according to fixed-fee schedules. Where a lawyer intends to undertake justifiable work in addition to the schedule, they can apply for an amendment to grant to fund that work.



When determining whether fees were within a reasonable range, auditors evaluated the complexity of the matters involved and the lawyer's approach.

Exceeds – A number of the files could have resulted in multiple grants of aid – significant cost saving for Ministry.

Where there were amendments to grant, auditors commented favourably on lawyers' letters to Legal Aid Services. These were detailed and set out the reasons for an amendment to the standard grant of aid.

Good business practice entailed lawyers sending their accounts to Legal Aid Services in a regular and timely fashion. Excellent or very good audits had few or no retrospective requests for amendments to grant. Clients' legal aid debt was recovered in full with costs.<sup>2</sup>

#### *Acceptable results*

Half of acceptable audits showed evidence of appropriate and reasonable invoicing, supported by a good timekeeping system. Invoices were supported by appropriate documentation and work done was evident.

The other half of acceptable audits had various defects in their invoicing practices. Some lawyers elected and charged for jury trials in instances where a judge alone trial appeared more appropriate. Some lawyers demonstrated a pattern of overcharging. Invoicing was sometimes not in line with the relevant fee schedule and didn't reflect actual work done. Also, detailed time records were often missing.

Few client attendance notes recording instructions and advice. Amounts claimed must be able supported by accurate and complete time records and attendance notes of the work undertaken.

#### *Poor and very poor results*

On poor and very poor audits, there were wide concerns around invoicing practices and value for money. On some, overcharging was noted, and/or a lack of a coherent time recording system. Work on file often didn't support the invoices tendered, including instances when the poor/very poor files were paid on a fixed fee basis.

The principal concern is in respect of the sentencing fees in four of the five audited files. In these cases, the fees paid by the Ministry do not appear justified given the nature of the prosecution and the written sentencing material on file as part of the audit.

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<sup>2</sup> Section 107 of the Legal Services Act 2011 states that a provider of legal aid services must take all reasonable steps to protect the interests of the Legal Services Commissioner under a charge in favour of the Commissioner.

## THEME FIVE – office systems and record-keeping that support the lawyer’s business

### *Excellent and very good results*

Legal aid lawyers with excellent and very good results were often described as having sound, efficient office management systems including time recording systems and case checklists. These systems helped drive the case towards completion and supported the lawyer’s business.

Excellent and very good audits had files that appeared to be a full record of the case. They had very clear records of discussions with clients, Police, Crown solicitors, other counsel and specialists such as medical practitioners. There were good and regular file notes made of attendances. Auditors commented that such good organisation contributed to efficient and timely service delivery.

Auditors praised files demonstrating organisation and order, at times describing them as ‘impeccable’. The auditing process was expedited by lawyers creating separate sections for legal aid documents, correspondence and other documents within the file. This made files easy to follow and allowed auditors to quickly assess a matter’s progress.

All files forwarded for audit were in impeccable order and therefore easy to audit. Any solicitor uplifting these files would be quickly able to ascertain the state of the proceedings for the client.

### *Acceptable results*

Some acceptable audits had sound office and record-keeping systems. Files were well organised, well presented and easy to follow. They had good file notes, email correspondence was retained, and sections were clearly defined making the files easy to follow. One audit report positively mentioned the practice of sending the Ministry interim tax invoices.

Overall the files were well presented and easy to read and understand. There was a high degree of transparency. The provider routinely obtains signed written instructions from her clients and makes detailed file notes.

However, other acceptable audits had issues with office systems and record-keeping. Some files had undated or incomplete records. Some files had no record of client care and written communication. Records weren’t in chronological order. Some documentation was messy or incomplete. There was inadequate detail in reporting letters to clients. Some files had no evidence of a time management system.

### *Poor and very poor results*

Almost all of the poor and very poor audits had disorganised files and incomplete records. There were no recorded instructions and inadequate time records.

File notes, if there were any, were minimal or messy. Outcomes weren’t recorded and sections weren’t separated, making an audit of the material difficult.

... absence of any recorded instructions (as to plea, elections, important decisions or briefs of evidence); any records of advice showing the client was making informed decisions.

Auditors said poor file maintenance sometimes brought an audit's overall audit rating down.

## Next steps

Our quality and value audit programme for the 2016-17 financial year started in July 2016. The new commitment for 2016-17 is 85 or more audits, which is 5% of legal aid lawyers who are listed as lead providers.

We offer this paper to legal aid professionals anticipating that it will support good practice and enable improvements in line with the practice themes identified by our auditors.

## Appendix 1- Legal aid complaints information

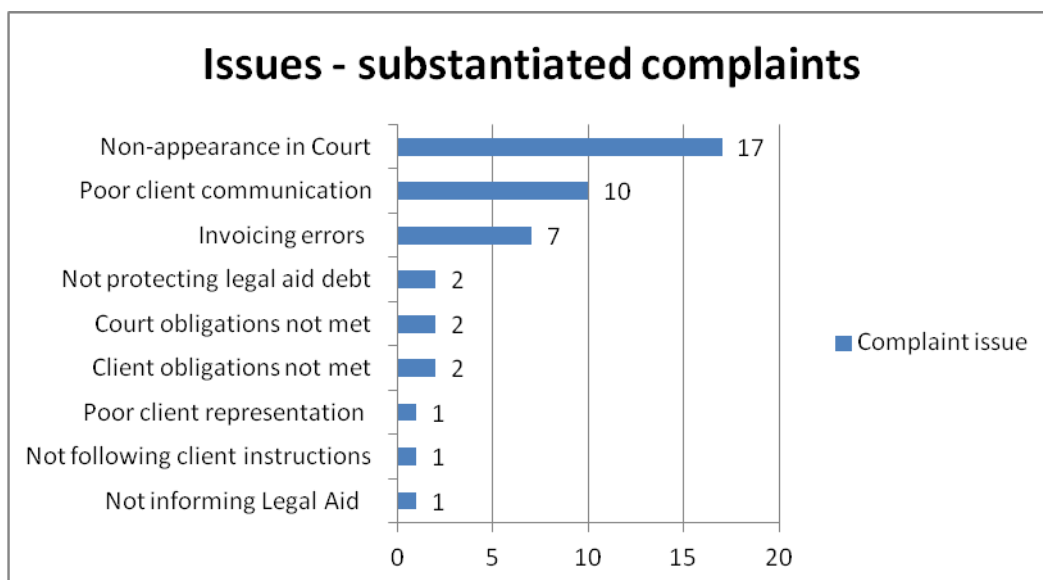
Legal Aid Services helps to ensure the quality of legal aid services through its complaints investigation service. Anyone can make a complaint about a legal aid lawyer.

All complaints about legal aid lawyers are assessed through a complaints management process. A dedicated Complaints Investigator notifies the legal aid lawyer about the complaint in writing and seeks their response. Some complaints may not move onto the investigation stage and may be resolved through early resolution. An investigation determines whether there is sufficient evidence that the lawyer has breached their statutory/contractual obligations.

In 2015-16 Legal Aid Services resolved 176 complaints about legal aid lawyers. From these:

- 98 complaints weren't substantiated following investigation/assessment
- 43 were substantiated following investigation/assessment
- 14 were withdrawn by the complainant
- 16 were deferred pending an investigation by the New Zealand Law Society

The most common themes in the 43 substantiated complaints are indicated in the table below.



The 3 most common themes from substantiated complaints were:

- Non-appearance in court – the lawyer failed to appear to represent their client in court.
- Poor client communication – the lawyer failed to reply to emails, return calls or keep their client informed about progress.

- Invoicing errors- the lawyer claimed fees for work they didn't do or billed a legal aid client privately.