

# Legal Aid Quality Assurance Review

Submissions and Decisions



MINISTRY OF  
JUSTICE  
*Tabu o te Ture*

New Zealand Government

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# FOREWORD

Thank you to everyone who engaged with the review on the quality assurance framework, specifically the complaints management policy and the introduction of limited audits.

Your contributions have helped us to determine the best way to ensure that our policies are fit for purpose and work well for you and our participants.

We have considered each of the submissions and this document helps to give context around why we have made the changes to the policies.

Thank you for your ongoing commitment to our participants.

**Tracey Baguley**

Acting Group Manager, National Service Delivery

# Introduction

The purpose of legal aid is to promote access to justice by providing legal services to people of insufficient means in an effective and efficient manner. The purpose of the Ministry's quality assurance processes is to ensure that legal aid services are delivered in an effective and efficient manner, in accordance with legislative, contractual and professional obligations.

There are two ways we ensure the quality of the provision of legal aid services:

## Investigation of complaints

We proposed the implementation of a triage process. This process will gather information using phone contact with complainants to ascertain the outcome they desire, gather further information and manage expectations. It can be determined at this stage if a full investigation is necessary or if the complaint falls within the new 'quick action' process.

## Auditing and monitoring

We proposed to increase the number of limited audits completed each year. The limited audit will enable the Ministry to perform financial checks, identify any potential issues that require a full audit and identify any education and support opportunities for providers.

## Process

The Complaints Management Policy and the Audit and Monitoring policy were released online for external consultation from 1 August 2021 until 20 August 2021. The consultation period was extended until 30 August 2021 due to COVID-19 outbreak in New Zealand. A total of 13 responses were received.

A small project team was set up and workshops were held discussing current issues with the quality assurance framework. Solutions were identified to improve the service for participants.

# Summary of decisions

We have addressed your feedback in turn:

Participants were asked if they had any feedback on the triage process outlined in the policy.	
What you said	Our comments
Are the phone interview notes taken into account as part of the complaint assessment as to upholding the complaint? If so, should they be released to the provider as part of the complaint information?	<p>Yes. If information is supplied as a part of that phone conversation, it will be passed on to the provider for their response.</p> <p>The phone interviews are designed to improve access for justice by creating another avenue of communication with complainants other than solely written contact.</p>
Is there an option where the complaint goes no further e.g. the subject complained about is outside the control of the provider (like when we have to wait forever for court time or an expert report and there's nothing we can do about it). Or where the complaint is clearly spurious e.g. we had a complaint where the person alleged conflict of interest because they believed (erroneously) that their lawyer used the same bank as the other party to the case.	<p>Yes. There will be an option where the complaint goes no further if appropriate.</p> <p>The phone interview will be used to discuss the complaint, what the potential outcomes may be and to manage expectations.</p>
There were some typos in the paragraph under the heading Note.	These will be addressed.
<p>The phone interview process runs the risk of information being shared between the MOJ and a complainant and not shared with counsel.</p> <p>Given that complaints could lead to cancellation of legal aid contracts the complaints process/ cancellation process is open to judicial review proceedings. The party being complained about should be privy to the entire content of any phone conferences made with complainants.</p>	<p>If information is supplied as a part of that phone conversation, it will be passed on to the provider for their response.</p> <p>The phone interviews are designed to improve access for justice by creating another avenue of communication with complainants other than solely written contact.</p>
Participants were asked if they had any feedback on the new quick action process outlined in the policy.	
What you said	Our comments
My concern would be the power that a "complainant" is perceived to have should they not be satisfied with a part in the procedure, particularly the s90 examination of costs, whereby they may not be	Thank you for your feedback. An examination of costs will only be considered an option if appropriate on assessment.

<p>repaying the legal aid services or the consequences of their dissatisfaction is further intrusion on the "provider's" files/ work.</p>	<p>Legal Aid Services is reviewing how they currently manage examination of costs.</p>
<p>The costs review provisions needs to be updated. My understanding is it was developed prior to the fixed fees. It's odd doing a fee review with the fixed fees though easier because all we need to do is demonstrate the applicable fee was reasonably charged. Often the client is complaining about the "amount" when it's a fixed fee so is what it is.</p>	<p>A fixed fee review is assessing that the applicable fee was reasonably charged. If a complaint is around the amount of a fixed fee as opposed to if the fixed fee was reasonable, then that will be discussed in the phone conversation as a part of managing expectations of complainants.</p>
<p>Facilitate clear transparent communication between complainer and practitioner.</p>	<p>We agree. Early resolution of complaints is recommended preferably through a conciliation/relationship-based approach. If appropriate, the Ministry will coordinate communication between the parties to encourage early resolution.</p> <p>This approach might be appropriate in instances where an ongoing relationship needs to be maintained, or if the usage of a conciliation/relationship-based approach might lead to a more equitable and mutually beneficial outcome for the parties to the dispute.</p>
<p>The referral to NZLS would sure need to be more than just a complaint that the provider had not followed their instructions. The complainant would need to have sufficient evidence in support. Sometimes clients allege this, when it is simply that they are asking their lawyer to do something which offends the lawyers duty to the court for example to make a submission that has no foundation or evidence to support. This may already be covered in the rest of the process but just wanted to ensure it is, as a referral to NZLS if it proceeds can be time consuming to respond to for the lawyer.</p>	<p>We agree - If a complaint is serious or very serious and relates to the provider's duties and obligations as a lawyer generally (as opposed to a matter that is specific to legal aid), it should be referred to the NZLS.</p> <p>Each referral to NZLS will be based on its merits and assessed in its entirety with consideration to all evidence and information supplied.</p>
<p>Justice staff are excellent in dealing with issues and complaints but the lawyers you use for audits and complaints are out of touch and hold other lawyers to a standard that is unreasonable. In a recent audit the auditor was biased and unreasonable. I feel that all complaints should go to NZLS for them to deal with and avoid using paid auditors to assess complaints. There is an obvious conflict of interest.</p>	<p>All complaints and limited audits will be completed by internal Ministry staff. Complaints are an important part of our quality assurance framework.</p> <p>If you wish to discuss a specific circumstance where an auditor was biased and unreasonable, please get in touch with Legal Aid Provider.</p>

<p>The complaint process seems to make no reference to the enormous stress that complaints have upon lawyers.</p>	<p>We acknowledge that the complaints process is stressful for legal aid providers and that is one of the reasons we are reviewing this – to make the process better for all whilst continuing to ensure quality of service.</p> <p>In our current process all complaints go through a lengthy investigation process when they could be with more efficiently.</p> <p>The triage process should prevent a number of complaints from entering the full investigation process by promoting early resolution methods.</p> <p>The phone interview will also be used to discuss the complaint, what the potential outcomes may be and to manage expectations.</p> <p>All of these factors should result in valid complaints being thoroughly investigated, and other complaints being managed appropriately.</p>
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<p>In respect of item one (complaints) I believe it is important to deal with any complaints quickly and resolve those that are resolvable in as short a time frame as possible because often there are court dates and continuing proceedings that need to be considered and may be frustrated by a niggling complaint.</p>	<p>We agree and hope that the triage process and quick action process will help to resolve complaints in a timely manner.</p>
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**Participants were asked if they had any other comments on the Complaints Management Policy.**

What you said	Our comments
<p>How fast is the automatic limited audit and how thorough is this? My concern is what is involved in this step given that the only requirement to more to this step is the dissatisfaction of the “complainant” in terms of the s90 examination of costs.</p>	<p>Thank you for your feedback. An examination of costs will only be considered an option if appropriate on assessment.</p> <p>Legal Aid Services is reviewing how they currently manage examination of costs.</p>
<p>It is of concern that PDS lawyers are not subject to the same level of scrutiny - it may be that, in fairness, the complaint procedure PDS lawyers would be subject to is made available to all Ministry contractors to ensure there is equity of treatment.</p>	<p>Public Defence Service have worked collaboratively with us on this project to share knowledge on their complaints policy. In our view, PDS are subject to the same level of scrutiny</p>
<p>I like the idea of having an audit available. I had a complaint investigate which was, in the upshot, simply that the client did not want to pay my portion of</p>	<p>We agree – this could result in early resolution of a complaint by advising the complainant that the</p>

<p>the debt. He failed to engage yet I was required to spend a lot of time answering his sweeping allegations. His concern was primarily related to the debt and he threw allegations around to achieve a reduction in his debt. It took four days shy of six months to receive advice that the investigation was at an end and the complaint was not substantiated.</p>	<p>provider was compliant with their obligations after a review.</p>
<p>The timeframes for the provider to reply can be very tight given</p> <ul style="list-style-type: none"> <li>a. Their workload and obligations e.g. court.</li> <li>b. The often-voluminous nature of the complaint and the need for the provider to respond fully.</li> <li>c. Can the lead provider charge for their time in dealing with a complaint especially when the complaint is not upheld?</li> </ul>	<p>We consider the timeframes to be adequate for most circumstances. If there are reasons why time frames cannot be met, these can be communicated to Legal Aid Provider team.</p> <p>Funding for additional costs related to an audit will not be covered as complying with the audit is a requirement under section 92 of the Legal Services Act 2011.</p>
<p>I suggest you set out the standard of evidence desired. While the Investigator may look at all information it would be helpful to advise if affidavit evidence is preferred. We have experienced difficulties with providing anything less in the past.</p>	<p>Thank you for your feedback. It is always preferred if a response is supported by independent evidence (e.g. emails/file notes/letters/court documents) where practicable.</p>
<p>Review process. I note that parties are to be advised when a review of a decision is sought by either party. This is essential, and any new information should be referred to the other party for comment, rather than just a review or reinvestigation taking into account the request for review. In the past, failure to seek a response from the non-reviewing party has resulted in injustice.</p>	<p>We agree – if there is any new information considered, it should be provided to the other party to consider.</p>
<p>The policy looks very good, and comprehensive but it is really the implementation that must have teeth.</p>	<p>Thank you for your feedback.</p>
<p>Maximise opportunity for dispute resolution</p>	<p>We agree. Early resolution of complaints is recommended preferably through a conciliation/relationship-based approach. If appropriate, the Ministry will coordinate communication between the parties to encourage early resolution.</p> <p>This approach might be appropriate in instances where an ongoing relationship needs to be maintained, or if the usage of a conciliation/relationship-based approach might lead to a more equitable and mutually beneficial outcome for the parties to the dispute.</p>



<p>Why is a "first minor traffic conviction" considered a "serious complaint". Legal Aid providers should not be held to a higher standard than others, a minor traffic conviction should not engage the complaints process at all.</p> <p>Failing to use an in interpreter should be clarified - it is not always clear that an interpreter is required. How is this to be judged in the context of a complaint? Notably Legal Aid only communicates with clients in English.</p> <p>Not providing advice on proceedings - vague - not every event requires or warrants reporting. Is there a particular method that advice should be given?</p>	<p>Thank you for your feedback. We will review the policy.</p>
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**Participants were asked if they had any feedback on limited audit process outlined in the Audits operational policy.**

<b>What you said</b>	<b>Our comments</b>
<p>yes. Recommend any failed limited audit progresses to a full audit before anything further occurs.</p>	<p>We agree.</p>
<p>10 working days isn't a lot of time to provide the information for the audit especially if there are a number of files to be audited.</p>	<p>We consider the timeframes to be adequate for most circumstances. If there are reasons why time frames cannot be met, these can be communicated to Legal Aid Provider team.</p>
<p>Opportunity to explain concerns/queries</p>	<p>With every tangible outcome of a limited audit, the provider will have a right to a review. Therefore, if the result can be easily explained or is incorrect and there is a valid explanation, the result will be changed.</p>
<p>I don't think the Ministry should be able to suspend any claims for payment until it is satisfied the provider is co-operating with the auditor. It would be better to cease assigning any new grants until the matter is rectified.</p> <p>I'm also a bit hesitant about the requirement that the provider must "if necessary, assist the auditor to make copies of documents". Some files are enormous, will the cost of this assistance be recoverable to the provider?</p> <p>What if, for example, the 'failure to cooperate' is because the auditor requests a s132 or s133 report (on a care of children matter), for example - and the provider is not permitted to release it without judicial direction?</p>	<p>Funding for additional costs related to an audit will not be covered as complying with the audit is a requirement under section 92 of the Legal Services Act 2011.</p> <p>If a document cannot be released without judicial direction, this can be discussed directly with Legal Aid Provider team.</p>

I'm in favour of limited audits.	Thank you for your feedback.
Audits are generally poorly undertaken. The auditors are out of touch with practice in bigger areas. They all appear to be Wellington based, or from small provincial NZ with limited experience of big case loads. Auditor when receiving feedback on draft reports lack knowledge about some of the billing process and are defensive as to criticism. They should be accountable and not anonymous as they are at present.	<p>The criteria for limited audits will be high level and objective. There will be no subjective aspect to the assessment. They will be completed by internal Ministry staff with knowledge of legal aid policies.</p> <p>Full audits will still be completed externally however that process will be reviewed at a later date. If you wish to discuss a specific circumstance where an auditor was not up to standard, please get in touch with Legal Aid Provider.</p>
A larger number of audits will inconvenience more lawyers, more often.	<p>We acknowledge that an audit may be an inconvenience however it is a crucial element of the quality assurance framework to ensure the service provided is efficient and effective.</p> <p>If the result of a limited audit is positive, the likelihood of a legal aid provider being chosen again decreases.</p>
In respect of item two given that we are contracted to the MOJ you should be at liberty to audit us as you see fit and the proposal of increasing limited audits and then if you pass those being considered a lower risk of requiring further audits certainly sounds fair. All audits are time consuming but are necessary to ensure that everyone is meeting the appropriate levels of competency and providing the service they are contracted to provide. Provided there are some reasonable time frames to comply with any audit you have no complaint from myself about this amendment.	Thank you for your feedback.
<b>Participants were asked if they had any other comments on the Audits operational policy.</b>	
<b>What you said</b>	<b>Our comments</b>
<p>LA provider should be able to file an ATG to deal with additional costs incurred by the audit e.g. provision of a new memory stick, printing costs, courier costs, administration time by the provider, dealing with any enquiries from the auditor.</p> <p>If increasing the number of audits moves the model to being more high trust i.e. less hoop jumping by the LA provider to get through approvals (whether that's an application, an estimate of hours, getting bills</p>	Funding for additional costs related to an audit will not be covered as complying with the audit is a requirement under section 92 of the Legal Services Act 2011.

<p>paid) then I would support it. However, it often feels like an "us and them" situation where there is every attempt made to find a reason not to approve an amendment to grant, not to approve hours claimed on fixed fee plus and a very bureaucratic system. The system feels like death by a thousand cuts as it is demoralising trying to provide legal aid services only to have to battle with the Ministry. I support more audits, or quicker audits, if the offset was more trust that providers are actually, more often than not, competent, dedicated providers who are genuinely claiming for services provided.</p>	
<p>The auditor needs to actually be familiar with MOJ policy as at times we've had to point out to the auditor what the policy is and that we *are* compliant.</p>	<p>Limited audits will be completed by internal Ministry of Justice staff. Internal guidelines documents will be provided to be used during the assessment</p>
<p>This is a comprehensive policy and process. It is really about implementation. That is what has not happened in the past, or sufficient noting of failures to enforce the issue for practitioners. I am not after suspension or cancellation of contracts but the warnings or notings must be made and recorded.</p>	<p>We agree – all outcomes of complaints and results of audits will be noted on each providers file</p>
<p>Minimise ambushing of practitioner.</p>	<p>Without further clarification we are unable to comment. However there will be communication with legal aid providers throughout the process and if the provider fails, they will have review rights.</p>
<p>One working day is an unreasonable period of notice for a special audit. It is highly unlikely any lawyer can properly prepare/ make themselves available in one working day.</p> <p>Five working days is a more reasonable and fairer timeframe.</p> <p>Legal Aid needs to acknowledge the stress that the audit process places upon providers.</p>	<p>Thank you for your feedback. The full audit process will be reviewed at a later date. We will reconsider the timeframes for special audits as a part of this review.</p> <p>We acknowledge that an audit may be an inconvenience however it is a crucial element of the quality assurance framework to ensure the service provided is efficient and effective.</p> <p>If the result of a limited audit is positive, the likelihood of a legal aid provider being chosen again decreases.</p>

# Questions

If you have any questions about what is discussed in this document, you can contact the project team at [ServiceImprovement-CSI@justice.govt.nz](mailto:ServiceImprovement-CSI@justice.govt.nz).

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

**justice.govt.nz**

info@justice.govt.nz

0800 COURTS  
0800 268 787

National Office  
Justice Centre | 19 Aitken St  
DX SX10088 | Wellington | New Zealand



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