



MINISTRY OF  
**JUSTICE**  
*Tábh o se Taire*

# Legal aid full audit methodology

Legal aid provider quality assurance

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# SECTION 1 | General

## 1.1 | Introduction

Full audits are a key mechanism for ensuring that legal aid providers deliver quality legal services for legal aid clients.

This document sets out the standard methodology for a legal aid provider<sup>1</sup> (provider) full audit. It describes the purpose, scope, methodology, criteria and process for full audits.

This document should be read alongside the Provider Manual Part 2 – Audits.

## 1.2 | Purpose and scope

The purpose of a full audit 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
- 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 them 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 aid services through guidance and clarification, and outlining expectations
- ensure that remedial action can be taken when a provider has breached their obligations.

The scope of a full audit is to assess the:

- legal advice and representation provided to the client
- management of cases
- adequacy of documentation
- compliance with the conditions of the legal aid grant
- expenditure of legal aid funds, including disbursements
- provider's service delivery systems.

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<sup>1</sup>A person approved under the Legal Services Act 2011 to provide legal aid or specified legal services.

## 1.3 | Overview of the full audit process

Stage	Description	Working days
<b>The Ministry</b>		
1	Appoints the auditor (once it has been established that there is no conflict of interest).	Day 1
2	Selects six (6) files for audit. Contacts the provider to inform them they have been selected for audit. Sends the auditor brief information about the provider.	
<b>The Provider</b>		
3	Works with the auditor to agree a date for the audit. Ensures the files are available for the auditor.	Day 1-10
<b>The Auditor</b>		
4	Completes the audit following the full audit methodology and provides a draft audit report to the Ministry.	By day 30
<b>The Ministry</b>		
5	Issues the draft report to provider.	Day 30-35
<b>The Provider</b>		
6	Considers the draft report and has the option to attend a meeting with the auditor (and the Ministry if necessary) to discuss the findings and ensure they understand any corrective actions that they are required to implement. Gives written feedback or further audit evidence as required within 10 working days.	Day 35-45
<b>The Auditor</b>		
7	Assesses the provider's response and submits a final audit report to the Ministry. Returns files to the provider.	Day 45-50
<b>The Ministry (the Secretary)</b>		
8	Sends a copy of the final audit report to the provider with clear direction on any follow up action required.	Day 50-55
<b>The provider</b>		
9	Completes any follow up action required within the timeframe specified.	As per audit report.
<b>The Ministry</b>		
10	Checks that the provider has completed the corrective actions as per the audit report. Refers the provider to the Performance Review Committee if the actions are not complete within the required timeframe.	As per audit report.

# SECTION 2 | Conducting the audit

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## 2.1 | Initiating the audit

The Ministry will contact the auditor to determine if there is a conflict of interest and check their availability to conduct an audit.

The Ministry will then email the provider to notify them they have been selected for audit and provide information that includes:

- the name and contact details of the auditor that has been appointed
- the type and location of audit (full audit, remote or in-person)
- anticipated duration of the audit
- any relevant health and safety procedures to be followed
- the scope and focus of the audit
- the timeframe for the audit
- the audit process
- which files should be made available to the auditor and how they should be made available.

A copy of this information will be sent to the auditor, who will then contact the provider to introduce themselves, arrange a date for the audit and answer any questions they have.

The audit will be conducted remotely or on site using the same methodology outlined in this document regardless of the location of the auditor.

During a remote audit, the auditor will be located at a separate location from the provider. Interviews will be conducted by video conference and pre-selected files will be sent to the auditor ahead of the audit.

During an in-person audit, the auditor will travel to the provider's location of work to enable face to face communication. The provider is expected to be present at agreed times during the audit and make the pre-selected files available to the auditor.

The Ministry will provide the auditor with a brief report about the provider that includes:

- the location and name of their practice
- previous audit dates and results
- how long they have held legal aid approval and which approvals they have
- the number of finalised cases over the past three years
- total payments made in the past three years
- average cost per case and type of cases completed
- risk factors that lead to selection for full audit, including the matters raised in any substantiated complaint.

## 2.2 | Selecting files for audit

The Ministry will generally select six legal aid cases that the provider managed that:

- have been finalised<sup>2</sup> within the previous six months
- that include recent activity and provide a reasonable spread of the provider's activity (ie a range of case types and activities undertaken).

If the provider has insufficient files that meet these criteria, the Ministry may select other files at its discretion or may select fewer than six files for audit. Selection of reassigned cases should be avoided.

## 2.3 | Fieldwork

The auditor will follow the same process whether the audit is conducted remotely or on site. Interviews will be conducted using video conferencing or telephone when the audit is conducted remotely, and face to face when conducted on site.

The fieldwork for the audit will be undertaken using the audit tool provided in Appendix 1 for criminal cases and Appendix 2 for family cases.

### Entry interview

The entry interview is an opportunity for the auditor and the provider to discuss how the audit will be conducted.

The auditor will ask the provider how they manage legal aid cases generally, and then ask specific questions related to each of the pre-selected cases. The questions will ensure that the auditor understands:

- steps the provider took in managing the case
- how the provider communicated with the client to ensure they understood the process and the key facts
- why specific advice was given and that well informed instructions were taken
- why key decisions were made and documented
- how the provider acted in the client's interests.

During the interview, the provider may discuss 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.

The auditor will take notes or record the interview as it forms part of the audit evidence.

The auditor and provider may go through the files together as part of the interview.

### Assessing files

The auditor will review the selected files to verify and validate the case management process the provider has outlined during interview. The file must contain all information required in the Practice Standards.

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<sup>2</sup> Finalised is defined as being fully billed and closed according to Ministry records, however we may look at open files that have not had any activity for a period of time.

Files may be made available physically or electronically. All relevant file documentation should be collated and made available to the auditor.

Auditors must assess five (5) files out of the six (6) files unless advised otherwise. However, auditors may audit more than the required five (5) files if they have concerns.

Where there is insufficient information on the file, the auditor may ask the provider for further information about how they managed the case.

The quality of services for all relevant elements of a case are reviewed and assessed against the audit criteria set out in the audit tool in Appendix 1.

Where information on the file provided for audit is missing or the file is incomplete, the auditor may request the missing information and/ or request additional files for audit.

### **Additional interviews**

As required (for example when the initial audit findings raise concerns) the auditor may conduct additional interviews with other people associated with the selected cases. The auditor will seek the provider's consent to approach others for interview and ask the provider to nominate people who could be interviewed.

Additional interviews could be conducted with:

- judicial officers that the provider frequently interacts with and/ or heard the cases selected for audit
- other providers or support staff in the same firm who can comment on the firm's general approach to case management and billing
- other providers who have worked on cases selected for audit (including those supervised or supervising/ mentoring the provider)
- the client or their support people
- any other relevant party that the auditor thinks may assist them in forming accurate audit findings.

The purpose of interviews with other legal professionals is to establish if the provider:

- adequately advocates for clients in court
- follows up on key evidence to ensure clients have a fair hearing
- conducts themselves in a professional manner
- causes concern to others in relation to the quality of legal aid representation provided.

Where interviews are conducted with other legal professionals (including judicial officers), more than one legal professional will be interviewed.

This interview evidence will be included in the audit findings only if it can be substantiated through multiple interviews and/or other audit evidence. These interviews will be used to ensure the auditor is forming accurate conclusions and validate their initial findings.

The auditor may also conduct additional interviews with the clients or survey them for their feedback. Engagement with clients should only be undertaken if the client's view is likely to add value to the overall audit finding. Care should be taken to avoid risk of causing the client anxiety. The auditor should check with the provider that it is appropriate for them to contact specific clients before contacting them.

The purpose of interviews with clients are to establish that the client:

- understood the charges (in criminal cases) and felt heard by the provider

- was well informed about what was happening throughout the case
- understood the implications of the key decisions they needed to make during the case
- felt they were given reasonable advice
- considered that the provider had followed their instructions or advised why those instructions could not be acted on.

The auditor may also conduct additional interviews with the provider.

The auditor will take notes and may record any additional interview with the interviewee's consent.

## Observation

Where the audit has raised concerns about the quality of the provider's legal representation or where interviews and file reviews do not provide a clear picture of the provider's performance, the auditor may opt to observe the provider in their interactions with clients and/ or in court. The provider will seek the client's consent for the auditor to observe client meetings or closed court proceedings.

It is expected that observation would only take place in rare circumstances, and the auditor would seek guidance from the Ministry on changes to audit timelines as a result of including observation within the audit.

The purpose of observation is to determine:

- how well the provider communicates with their client to ensure the client understands and can actively participate in decision making related to their case
- whether the provider adequately advocates for the client in court
- that the provider follows the client's instructions in court
- whether the provider is well prepared for the client meeting or hearing
- whether the provider conducts themselves with professionalism.

The auditor's observations will be used to inform the audit findings and provide a more comprehensive picture of the quality of legal representation provided. Observation alone will not be used as a sole source of audit evidence.

For example, if the provider is able to describe good management practices for working with clients, but there is no written evidence on file to support what they have described, the auditor can conduct additional interviews and observation to gain a more complete picture of the overall standard of legal representation provided. While the audit is likely to result in corrective actions with regard to the file quality, the matters raised would be less serious if the additional interviews and observation reflect a high standard of legal representation.

If the auditor has concerns about an interaction that arose during a court hearing that is material for the auditor, the Ministry may arrange for the auditor to access to the court recording (if no properly documented record or other material is available). The Ministry will seek consent from a judicial officer to access court information as necessary.

The auditor can take notes in court using pen and paper but would need to seek permission from the court to take notes on an electronic device. Any notes taken must be managed in accordance with the Family Court Act 1980, section 11B.

The Ministry would seek permission from the court as required to enable the auditor to attend any closed court proceeding. In court observations will be conducted discretely.

### **Initial feedback to provider**

On completion of the fieldwork, the auditor will arrange another interview with the provider, ideally on the same day as the audit. At this interview the auditor will:

- outline their high-level findings
- give the provider an opportunity to offer additional information about the findings
- explain the next steps.

# SECTION 3 | The audit report and implementing corrective actions

## 3.1 | Draft report

Following the assessment of the provider’s case management, the auditor will prepare a draft audit report.

The draft report will detail:

- the overall rating
- key findings and observations – this highlights strengths, and areas of good practice
- recommendations for improvement – this records where the provider would benefit from making improvements to their practice
- any corrective actions required – this sets out a corrective action plan that must be implemented by the provider within a specified timeframe.

The auditor will complete the draft audit report using the Audit Report Template.

The audit methodology enables auditors to make overall findings on how they think the provider manages their work. The table below provides a key for the overall rating. A more detailed description of characteristics of each rating category is set out as an appendix to the audit report template.

Table 1: 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	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
<b>Value Assessment</b>	
Exceeds value assessment	Yes / No
Meets value assessment	Yes / No
Does not meet	Yes / No

## 3.2 | Finalising the audit report

On completion of the audit, the auditor sends a draft report to the Ministry. Ministry staff will review the report and discuss any points of interest with the auditor. The purpose of this review is to ensure the Ministry is familiar with the findings and overall rating before the draft report is sent to the provider.

## Provider consideration of draft report

The Ministry will send the draft report to the provider for review.

The provider may request a meeting with the auditor and the Ministry to discuss the draft report. At this meeting, the provider is encouraged to ask for clarification if anything is unclear. If there are corrective actions, the provider should gain a clear understanding of what they need to do, how they should do it, what evidence they need to provide to the Ministry to show they have done it, and when the action needs to be completed.

If the provider would like the auditor to reconsider the audit findings, they can identify at the meeting what additional information can be sent to support any changes to the findings. Any written feedback must be provided within 10 working days of the draft report being issued. Any feedback about the draft report will be considered by the Ministry and the auditor before the final report is issued.

If the provider does not give written feedback or request a meeting about the draft report within 10 working days, the draft report will be considered final and a final report will be issued.

Reasonable requests for time extension may be granted at the Ministry's discretion.

### When the draft report includes a corrective action

Where a draft audit report requires that the provider complete corrective actions, the Ministry will arrange a meeting between the provider and the auditor to ensure the provider understands what they are expected to do to implement the corrective actions.

## 3.3 | Implementing corrective actions and recommendations for improvement

### Corrective actions

Corrective actions are issued in response to serious audit findings and must be completed within the timeframe specified in the final audit report.

Once complete, the provider must send the Ministry evidence that demonstrates that the required improvements have been put into practice.

If the Ministry has not received the provider's evidence one week before the "date to be completed" outlined in the audit report, we will contact the provider to determine whether they will be providing it before the due date, or if there is any acceptable reason why they have been unable to complete the required corrective action. In rare circumstances, and when the provider has an acceptable reason for not yet completing the required corrective action, the Ministry may offer an extension of time to complete the action.

Where the provider does not complete the corrective action within the required timeframe, and to the Ministry's satisfaction, the Ministry will, subject to section 79 of the Act, refer the provider to the Performance Review Committee.

### Recommendations

Recommendations are made for less serious audit findings. Where a final audit report makes recommendations for improvement, the provider should ensure they implement the recommendation within the timeframe specified in the report.

The Ministry expects providers to implement recommendations to ensure they are providing legal services in line with good practice. Once complete, the provider should send the Ministry evidence of the changes they have made and demonstrate that the improvements have been put into

practice. Providers that do not implement the recommendations and notify the Ministry they have made the recommended changes are more likely to be re-audited in future (includes limited, full or special audit).

### **Matters requiring immediate action**

If an audit identifies matters related to misclaimed fees or disbursements, the Ministry will take action to reclaim any overpayments.

If the audit identifies very serious issues that need to be dealt with immediately (eg private payment, fraud, non-compliance with conditions of approval) it will take action under the provider contract (such as issuing a default notice, or considering cancellation or variation of the providers approval) as necessary.

## **3.4 | Performance Review Committee**

The Ministry may refer providers to the Performance Review Committee (PRC) if they believe that a lawyer has failed to comply with their obligations, and that if the failure is substantiated, it would justify cancelling or modifying the providers approval(s).

The PRC is established under section 79 of the Act. PRC members are experienced lawyers who have been nominated by the New Zealand Law Society (NZLS) and appointed by the Secretary.

The PRC can recommend sanctions relating to a provider's approvals which may include but are not limited to, modification, supervision or cancellation. The PRC will consider the referral made by the Ministry and make a recommendation to the Secretary about the actions to be taken.

# Appendix 1: Criminal audit tool

## Entry interview questions

- 1) Tell me about your practice, what is your usual case load, what sort of cases do you do, who is your typical client, what proportion of your work is legal aid?
- 2) What is your usual approach to managing cases?

## Effective communication

- 3) How do you ensure that you communicate effectively with your clients?
- 4) How do you keep your client informed about progress with their case?
- 5) How do you ensure your clients understands and can comply with their bail conditions?
- 6) How do you identify when a client may need an interpreter?
- 7) Are you familiar with communication assistance and when this should be used?
- 8) How do you determine if the client experiences any issues with their mental health?
- 9) What is your approach with clients with addiction, alcohol or drug issues?
- 10) How do you approach communication with clients who are non-cooperative?

## Managing cases

- 11) How do you go about confirming the facts of the case with the client?
- 12) Once you and the client are agreed on the facts of the case, how do you explain the options for resolving the case with the client?
- 13) How do you establish a defence?
- 14) What do you do if a client's instructions are not aligned with your advice and think could be detrimental to their case?
- 15) What aspects are important to consider if the case relates to sexual violence?
- 16) How do you approach the option of restorative justice with your clients?
- 17) In what circumstances would you consider diversion for a client?

## Financial management, supervision, complaints and wellbeing

- 18) How do you manage client complaints or concerns?
- 19) How do you undertake your supervisory role?/ what supervisory support do you have?
- 20) How do you ensure you are claiming the appropriate fixed fees?
- 21) If the case is not fixed fee, how do you ensure the time charged is reasonable for all providers who worked on the case and verifiable against the time records?
- 22) Do you have support to ensure you can take annual leave and have back up if required?
- 23) How do you ensure you have work life balance, and manage the impacts of being exposed to traumatic material?
- 24) Are you enjoying your work?

## Interview audit criteria

Use this section to score the provider's answers to the entry interview questions. See the audit report template for the audit ratings and the rating scale.

### A) Effective communication

Interview question guide	Audit criteria	Rating, VG, A,P,
1) How do you ensure that you communicate effectively with your clients?	The provider: a) uses plain language in oral and written communication – simple words, no jargon, explains legal terms, b) tests that the client has understood what the lawyer said by asking the client to repeat what they have said in their own words – check that the client is not agreeing or disengaging because they don't understand c) builds confidence in the relationship by listening and responding, aims to build rapport and trust d) adapts communication style to suit the client's needs (includes methods of communication such as text messages)	
2) How do you keep your client informed about progress with their case?	The provider: a) arranges to meet the client before the first court appearance b) fosters a culture of keeping clients 'in the loop', listening to what they say, and clearly noting, and acting on their legitimate instructions and concerns.	
3) How do you ensure your clients understand and can comply with their bail conditions?	The provider: a) explains the bail conditions to the client b) has agreed to bail conditions that the client can comply with (eg recognise if they have a substance abuse disorder).	
4) How do you identify when a client may need an interpreter?	The provider: a) asks the client about their language ability and if they need an interpreter; explains what an interpreter is and how they can help b) asks the client to repeat back what the provider has told them about interpreters to test their understanding and language ability.	
5) Are you familiar with communication assistance and when this should be used?	The provider: a) asks the client, (and with the client's consent) their whānau, or social worker about their educational history and achievement or previous assessment or diagnosis of neurodiversity, disability or mental health condition b) is aware of flags that may indicate a client may require communication assistance c) Where relevant, completes the communication assistance application form and submits it to the court for consideration.	
6) How do you determine if the client experiences any issues with their mental health?	The provider: a) asks the client, (and with the client's consent) their whānau, or social worker about any relevant medical or experience of mental distress. b) determines whether any mental health or intellectual disability issues potentially affect: i. fitness to plead and/or instruct a lawyer	

	<ul style="list-style-type: none"> <li>ii. whether the client had the requisite <i>mens rea</i> or potentially provide a defence</li> <li>iii. release on bail and the appropriate bail conditions</li> <li>iv. the culpability of the client if found guilty and the appropriate sentence</li> <li>v. release on parole and the appropriate parole conditions</li> <li>vi. considers whether the client needs to be assessed by a mental health professional and, if so, what kind.</li> </ul>	
7) What is your approach with clients with addiction, alcohol or drug issues?	<p>The provider establishes whether the addiction, alcohol or drug issues:</p> <ul style="list-style-type: none"> <li>a) make the client suitable for the AODT court</li> <li>b) potentially affect release on bail and the appropriate bail conditions</li> <li>c) potentially affect the culpability of the client if found guilty and the appropriate sentence (and, if applicable, release conditions from a short-term sentence of imprisonment)</li> <li>d) potentially affect release on parole and the appropriate parole conditions</li> <li>e) considers whether the client needs to be assessed by a professional and, if so, what kind.</li> </ul>	
8) How do you approach communication with clients who are non-cooperative?	<p>The provider:</p> <ul style="list-style-type: none"> <li>a) explains the consequences for non-cooperation</li> <li>b) advises the client of what they need to do to ensure the court proceeding runs efficiently and effectively.</li> </ul>	

## B) Managing cases

Interview question guide	Audit criteria	Rating VG, A, P
1) How do you go about confirming the facts of the case with the client?	<p>The provider:</p> <ul style="list-style-type: none"> <li>a) uses a chronology to establish the events of the case</li> <li>b) discusses the events and associated evidence.</li> </ul>	
2) Once you and the client are agreed on the facts of the case, how do you explain the options for resolving the case with the client?	<p>The provider:</p> <ul style="list-style-type: none"> <li>a) gives the client advice on potential sentencing outcomes, risks and benefits of going to trial, electing judge-alone or jury trial and credit for early guilty plea</li> <li>b) explains the difference between a judge-alone trial and a jury trial</li> <li>c) discusses the strengths and weaknesses of the prosecution case, what defence could be available, and what has to be done to prove a defence</li> <li>d) provides advice on likely sentencing outcomes, any counselling or steps the client should take to prepare for sentencing, options for restorative justice, sentencing reports, affidavits and support letters</li> <li>e) explains loss of credit for late guilty plea</li> <li>f) pursues alternative disposal of cases.</li> </ul>	
3) How do you establish a defence?	<p>The provider:</p> <ul style="list-style-type: none"> <li>a) is persistent in obtaining sufficient disclosure and considers if the evidence is admissible</li> <li>b) is persistent on following up on new evidence or witnesses that could provide a defence</li> </ul>	

	<ul style="list-style-type: none"> <li>c) asks the clients if they are aware of any evidential leads not otherwise apparent from the papers on file.</li> <li>d) ensure any contradictory accounts or evidence are investigated</li> <li>e) makes sufficient effort to identify any mitigating or extenuating circumstances when clients intend to plead guilty.</li> </ul>	
4) What do you do if a client's instructions are not aligned with your advice and think could be detrimental to their case?	<p>The provider:</p> <ul style="list-style-type: none"> <li>a) discusses the strengths and weaknesses of the prosecution case, what defence could be available, and what has to be done to prove a defence</li> <li>b) makes it clear to the client what the outcome could be if the client's instructions are followed.</li> </ul>	
5) What aspects are important to consider if the case relates to sexual violence?	<p>The provider:</p> <ul style="list-style-type: none"> <li>a) has up to date knowledge of the changes introduced with the Sexual Violence Legislation Act 2021 and good practice in sexual violence cases.</li> <li>b) has a working knowledge of family violence and sexual violence dynamics and what action to take if they suspect their client is affected by family violence and sexual violence</li> <li>c) ensures bail and parole conditions are appropriate if family violence or sexual violence are currently affecting the client</li> <li>d) if the charge is related to alleged family violence by the client, the provider considers how this affects: <ul style="list-style-type: none"> <li>i. release on bail and the appropriate bail conditions</li> <li>ii. the culpability of the client if found guilty (is family violence inherent in the charge or an additional aggravating factor) and the appropriate sentence</li> <li>iii. release on parole and the appropriate parole conditions.</li> </ul> </li> </ul>	
6) How do you approach the option of restorative justice with your clients?	<p>The provider:</p> <ul style="list-style-type: none"> <li>a) understands when a matter may be suitable for restorative justice and explain this to clients</li> <li>b) ensures the client and the victim agree to restorative justice.</li> </ul>	
7) In what circumstances would you consider diversion for a client?	The provider checks a client's previous convictions and considers diversion for low level charges.	

### C) Financial management, supervision and complaints

Interview question guide	Audit criteria	Rating VG, A, P
1) How do you manage client complaints or concerns?	The provider listens if the client has a complaint or concern and responds to their feedback or questions.	
2) How do you undertake your supervisory role?/ what supervisory support do you have?	<p>The provider:</p> <ul style="list-style-type: none"> <li>a) reviews the files if supervising another lawyer</li> <li>b) is available and approachable to give/ receive advice?</li> <li>c) ensures training for supervised lawyer is available.</li> </ul>	

3) How do you ensure you are claiming the appropriate fixed fees?	The provider has a working knowledge of the fixed fee schedule and appropriate processes for ensuring fixed fees are claimed correctly.	
4) If not a fixed fee case, how do you ensure the time charged is reasonable for all providers who worked on the case and verifiable against the time records?	The provider uses an appropriate cost management tracking system.	

## File review criteria

### A) Effective communication

File review audit criteria	1	2	3	4	5
1) The provider has notes of regular contact with the client that keeps them updated of progress and shows a culture of keeping clients "in the loop".					
2) The language used in written communication with the client is appropriate for the client's capacity, avoids jargon and complex information is clearly presented.					
3) The provider has used communication methods suitable for the client.					
4) It is clear from the file that the client is making informed decisions.					
5) Client communication outlines the provider's responsibilities to their client including how they will communicate, financial arrangements, confidentiality, management of personal information, documents and records, conflicts of interest, duty of care, and how to make a complaint.					
6) The provider has responded to the client's calls or emails in a timely way or explained to them if they need more time.					
7) If the client fails to respond, the provider has made an effort to explain the consequences and get around the lack of co-operation.					
8) The file documents any use of an interpreter, communication assistance, records of mental health history, or pre-sentence reports.					

### B) Managing cases

File review audit criteria	1	2	3	4	5
9) The provider has ensured the client has signed a brief of evidence on file or there is an affidavit of their account of the events.					
10) The provider has formally requested disclosure and recorded the ongoing obligation to provide disclosure					
11) The file includes written confirmation that the client agrees with the summary of facts.					
12) The file records any client comments on the evidence.					
13) If detailed instructions were not possible, the reasons why are noted on file.					
14) Instructions have been reviewed as the case develops.					
15) The provider has followed up new leads if new evidence is disclosed or new witnesses identified.					
16) The provider uses templates and letters for progress reports, reviewing instructions and confirming new developments					
17) The provider uses a template that prompts admissions, denials, evidential leads (including potential witnesses), alibi evidence, health, especially mental health					

issues, character, welfare, and other 'background' issues, provocation, self-defence, and mitigating and extenuating circumstances.					
18) Defence strategies in sexual violence cases reflect best practice.					
19) The provider has clear notes of all interviews and advice given, confirmation of instructions.					
20) The provider has explained elements of defence to client.					
21) The provider has given advice that includes a clear explanation of the options open to the client.					
22) The provider has given timely advice – did they miss an opportunity for credit for early guilty plea?					
23) The provider has given correct advice that is specific to the case.					
24) The client's instructions are sufficiently detailed and are signed.					
25) Court events are recorded in sufficiently clear detail.					
26) Submissions and other documents are good quality.					
27) Documentation shows the provider has taken appropriate steps to enable the client's release from custody where possible (eg has worked with the client to find a suitable residence for home detention, bail etc).					
28) The provider documents information collected and actions taken towards seeking diversion.					
29) The file includes a copy of all court documents filed, served, or issue on file.					
30) Overall, was the work done effective in achieving the client's reasonable objectives.					
31) Did the provider do everything reasonable to assist the client?					
32) Where issues, (bail, venue, guilt, appeal etc...) were contested, were the outcomes achieved: (a) better than expected, (b) as expected, (c) worse than expected?					
33) In your view, was there any risk that the client was prejudiced in any way by the work done or not done?					

### C) Financial management, supervision and complaints

File review audit criteria	1	2	3	4	5
34) The provider has an appropriate written complaints management policy and process.					
35) The provider has followed their complaints policy when responding to complaints.					
36) The provider gives clear feedback and advice to lawyers they are supervising					
37) The provider reviews files under their supervision at appropriate times.					
38) The provider seeks an amendment to grant for additional work (whether fixed fee or not).					
39) Any amendment to grant sought is reasonable.					
40) Any other provider or other resource that worked on the case has been paid in a timely manner.					
41) The provider uses a cost management tracking system appropriately/ appropriately reconciles legal aid fixed fees.					
42) Any disbursements incurred is appropriate and verifiable against the time records.					
43) The provider uses resources effectively, eg experts.					
44) Any late change in plea is justifiable.					

## Provider behaviour and advocacy at court

Use this section if you are interviewing members of the judiciary or other stakeholders.

Interview question guide – judiciary and other stakeholders	Audit criteria	Rating VG, A, P, N/A
21) Does the provider interact with others in a professional manner?	The provider: a) is familiar with the case and prepared for any hearing b) conduct themselves in a courteous and professional manner c) conducts themselves in a way that respects the parties involved d) remains composed when confronted with a question or unforeseen circumstance.	
45) Does the provider work with others in a way that does not inflame the dispute between parties?	The provider does not inflame the dispute between the parties.	
46) Do they advocate appropriately for bail?	The provider considers the appropriateness of applications for name suppression and/or bail, and make any application in a timely fashion.	
47) Do they address all evidential issues in dispute?	The provider considers the appropriateness of any evidence and challenges its admissibility if relevant.	
48) Did they identify a realistic defence/ logically developed argument?	Defence strategies are appropriate given the facts of the case (eg no use of self-defence defence if elements of the defence cannot be met).	
49) Are all the necessary witnesses summonsed and properly briefed? Did they cross examine key witnesses?	The provider: a) has made effort to identify witnesses and they are prepared for the hearing b) is prepared for cross-examination and makes an effort to cross examine key witnesses when appropriate.	
50) Overall, how effective was the work done in achieving the client’s reasonable objectives?		
51) Did the provider do everything reasonable to assist the client?		
52) Where issues, (bail, venue, guilt, appeal etc...) were contested, were the outcomes achieved: (a) better than expected, (b) as expected, (c) worse than expected?		
53) In your view, was there any risk that the client was prejudiced in any way by the work done or not done?		

## In court/ client meeting observation

Use this section if you are observing the provider in court or during a meeting with a client.

Interview question guide – judiciary and other stakeholders	Audit criteria	Rating VG, A, P
54) Does the provider interact with others in a professional manner?	The provider: a) is familiar with the case and prepared for any hearing b) conducts themselves in a courteous and professional manner c) conducts themselves in a way that respects the parties involved d) remains composed when confronted with a question or unforeseen circumstance.	
84) Does the provider work with others in a way that does not inflame the dispute between parties?	The provider does not inflame the dispute between the parties.	
85) Did they advocate appropriately for bail?	The provider considers the appropriateness of applications for name suppression and/or bail, and make any application in a timely fashion.	
86) Did they address all evidential issues in dispute?	The provider considers the appropriateness of any evidence and challenges its admissibility if relevant.	
87) Have all the necessary witnesses been summonsed and properly briefed? Did they cross examine key witnesses?	The provider: a) has made effort to identify witnesses and they are prepared for the hearing b) is prepared for cross-examination and makes an effort to cross examine key witnesses when appropriate.	
88) Did they identify a realistic defence/ logically developed argument?	Defence strategies are appropriate given the facts of the case (eg no use of self-defence defence if elements of the defence cannot be met).	
89) Does the provider use plain language in court?	The provider’s communication in court is free from jargon and overly complex phrasing, especially when questioning witnesses.	
90) Overall, how effective was the work done in achieving the client’s reasonable objectives?		
91) Did the provider do everything reasonable to assist the client?		
92) Where issues, (bail, venue, guilt, appeal etc...) were contested, were the outcomes achieved: (a) better than expected, (b) as expected, (c) worse than expected?		
93) In your view, was there any risk that the client was prejudiced in any way by the work done or not done?		

# Relevant practice standards and contract provisions

## Effective communication

- PS 2.7 Communicate with the client in a way that is clear, appropriate and tailored to the client's circumstances and keeps the client informed about the progress of their case, the procedure and substantive issues.
- PS 4.1 When communicating with the client, endeavour to use language that is understandable, free from unnecessary jargon and appropriate to the age, gender and capacity of the client.
- PS 10.5 When dealing with litigants in person, endeavour to communicate using language that is understandable, free of unnecessary jargon and appropriate to the age, gender and capacity of the person.
- PA 13.4 On assignment, and subsequently if necessary, consider the appropriateness of applications for name suppression and/or bail, and make any application in a timely fashion.
- PS 13.7 Take particular care to ensure that any client remanded in custody is kept fully informed of the progress of the proceeding.
- PS 4.7 In a timely manner, keep the client informed of the progress of the matter, including advising the client of the stages through which a matter progresses and the opportunity a stage might provide to resolve matters.
- PS 13.6 Meet with the client as soon as reasonably practicable, and, preferably before the first court appearance after assignment. Where the client is remanded in custody, the first meeting may be immediately prior to court.
- PS 10.3 Answer or respond to telephone inquiries promptly.
- PS 10.4 Provide a timely and meaningful reply to correspondence, reply promptly to all urgent matters and advise clients that a detailed response for advice might require more time.
- PS 4.4 Advise the client of the steps that he or she can or ought to take in order to assist the efficient and effective conduct of the matter.
- PS 4.2 If appropriate, seek the use of a qualified interpreter (or communication assistance) if legal aid funding is required for this, apply for and obtain that funding in a timely manner in advance.
- PS 13.12 Consider whether the client may present with any issues that raise the following questions in relation to the client:
- 13.12.1 Does the client have any intellectual disability or mental health issues and, if so, when and how are they to be addressed?
  - 13.12.2 Does the client have any addiction, alcohol or drug issues and, if so, when and how are they to be addressed?
  - 13.12.3 Is the matter suitable for restorative justice?
  - 13.12.4 Is family violence involved?
  - 13.12.5 Is the matter suitable for diversion?

## Managing cases

- 13.13 Wherever practicable, obtain instructions in writing concerning the incident or events giving rise to the charge(s). Details as to the client's background, physical health and other relevant details should be obtained. When it is not possible to obtain instructions in writing, a lawyer should make clear file notes of instructions (or the lack of instructions).
- PS 4.3 Give timely, appropriate and sufficiently detailed advice and explanations to the client to enable him or her to make an informed decision about the matter.
- PS 4.5 Advise the client of relevant aspects of the matter, including the material evidence, risks, costs, liability and merits of settlement.
- PS 4.6 At appropriate times, reassess and again advise the client of the relevant aspects of the matter.
- PS 5.4 Record the client's factual instructions in a signed brief of evidence unless there is a good reason not to, for example where a client is not a witness or has already given a full account such as in a Police interview or where the evidence will be in an affidavit.
- PS 2.8 Maintain a record of important advice given and a record of key instructions.
- PS 11.1 Files are kept in such a way that if anyone, other than the lawyer conducting the matter, assumes management of the file it is possible for that person promptly to ascertain relevant matters
- PS 13.9 Before the client enters any election or plea:
- 13.9.1 Obtain relevant disclosure from the prosecution, and discuss it with the client; and
  - 13.9.2 Advise the client of defence disclosure obligations.

PS 2.6 Exercise independent professional judgment on a client's behalf and exercise due care in giving appropriate advice to a client that is legally correct and appropriate, including on calling evidence, the use of experts, dispute resolution and options following the outcome of the case.

PS 4.5 Advise the client of relevant aspects of the matter, including the material evidence, risks, costs, liability and merits of settlement.

PS 14.2 Advise the client as to relevant defences in the light of witness statements. On receipt of the prosecution's briefs of evidence, the lawyer must discuss the briefs with the client.

PS 8.1 Encourage the client to resolve the matter where appropriate. This will be in most cases, with the exception of some cases affecting the safety of a person and criminal cases for which there are limitations and specific processes, such as restorative justice conferences. It may include making or considering settlement offers and, where available, using other appropriate dispute resolution methods, for example; alternative dispute resolution, mediation, arbitration and settlement conferences

PS 13.8 Advise the client at the first reasonable opportunity and throughout the case about the sentencing discounts for pleas of guilty in terms of R v Hessel [2011] 1 NZLR 607 (SC). The lawyer will remind the client of the discounts prior to any status hearing or call-over, and before any trial or hearing.

PS 13.9 Before the client enters any election or plea: 13.9.1 Obtain relevant disclosure from the prosecution, and discuss it with the client; and 13.9.2 Advise the client of defence disclosure obligations. 13.10 Assist the client to enter the plea or election at the earliest practicable time.

PS 13.14 Be familiar with a client's previous convictions before a plea is entered.

PS 4.8 Where appropriate and practical, advice should be provided to the client in writing, subject to client instructions to the contrary.

PS 17.2 Subject to the client's instructions provide the client with copies of all applications, affidavits and reports filed in the proceedings (subject to any court restrictions as to release of documents). When the matter is concluded the client must be provided with a sealed copy of any order or agreement, and a copy of any judgment. The client must be advised about the basis for any appeal, the chances of success of the appeal, and time limits for review or appeal.

17.3 Explain to the client what processes are available within the Family Court for resolution of disputes, counselling, mediation, and types of hearings, and, once a matter is in the Family Court system, provide an appropriate explanation of the applicable process in a way the client can understand.

#### **Financial management, supervision and complaints**

PS 2.11 Supervise adequately and have a plan for the review and supervision of any person undertaking legal aid work under their supervision.

CONTRACT Delegation of work

4.1. The Provider may only delegate work on an Accepted Assignment as authorised by, and in accordance with, the Delegation of Work policy in the Grants Manual.

4.2. Subject to any contrary or additional provisions in the Delegation of Work policy, if the Provider delegates work, the Provider:

4.2.1. retains overall responsibility for the Assignment (unless and until it is reassigned) and any services supplied in respect of it

4.2.2. is responsible for appropriate supervision of any Supervised Provider that the Provider delegates work to

4.2.3. must seek prior approval from the Commissioner before delegating work to another Lead Provider, unless prior approval is not required under the policy

4.2.4. must ensure that any provider they delegate work to has the appropriate Approval/s to undertake such work and complies with any Condition/s of their Approval/s. This applies whether the delegated provider is to be paid or unpaid, and

4.2.5. must ensure that any work delegated to a non-lawyer is of a kind permitted by the policy, and must provide appropriate supervision.

CON 3.6 In accordance with section 105 of the Act, the Provider must not take any payments relating to Legal Aid Services or Specified Legal Services unless those 7 Provider Contract for the Provision of Legal Aid Services and Specified Legal Services| Version 5| November 2016 payments are authorised by or under the Act, or are authorised by the Commissioner acting under the Act or any regulations made under the Act.

CON 3.12.6 receipts and records of disbursements 3.12.7. records of all time spent on the Assignment by the Provider and any other providers or non-lawyers, and 3.12.8. records of any Proceeds of Proceedings.

CON: 9 Service delivery systems (1) The applicant must have service delivery systems that support the applicant to provide and account for legal aid services or specified legal services in an effective, efficient, and ethical manner.

CON 3.12.3. the Provider must endeavour to maintain a coherent file that includes 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, 3.12.7. records of all time spent on the Assignment by the Provider and any other providers or non-lawyers.

#### **Interviewing the judiciary or other stakeholders, and undertaking observations**

PS 10.1 In dealing with Judges, other lawyers, litigants in person, experts, court staff and the Ministry of Justice, conduct him or herself in a courteous and professional manner in order to encourage and not impede good working relationships.

PS 2.9 Conduct themselves in a way that respects the parties involved and does not inflame the dispute between the parties. Lawyers should avoid conducting proceedings in a manner that will increase distrust, hostility or animosity between the parties without achieving any significant and legitimate benefit for the client.

PS 13.4 On assignment, and subsequently if necessary, consider the appropriateness of applications for name suppression and/or bail, and make any application in a timely fashion.

## Appendix 2: Family law audit tool

### Entry interview questions

- 1) Tell me about your practice, what is your usual case load, what sort of cases do you do, who is your typical client?
- 2) What is your usual approach to managing cases?

### Effective communication

- 3) How do you ensure that you communicate effectively with your clients?
- 4) How do you ensure your client understands the options available to them to resolve family court disputes?
- 5) How do you ensure your clients understand and comply with any protection order or parenting order?
- 6) How do you keep your client informed about progress with their case?
- 7) How do you identify when a client may need an interpreter?
- 8) Are you familiar with communication assistance and when this should be used?
- 9) How do you determine if the client experiences any issues with their mental health?
- 10) What is your approach with clients with addiction, alcohol or drug issues?
- 11) How do you approach communication with clients who are non-cooperative?

### Managing cases

- 12) How do you work with parents to facilitate agreement about their children?
- 13) What techniques do you use to avoid inflaming the dispute between parties?
- 14) What factors do you consider when advising clients to make a without notice application?
- 15) How do you ensure that a client has made a full disclosure of all facts relevant to the application?
- 16) How would you determine if the client is affected by family or sexual violence dynamics?
- 17) What steps do you take to ensure the client's safety in family violence matters?

### Financial management, supervision, complaints and wellbeing

- 18) How do you manage client complaints or concerns?
- 19) How do you undertake your supervisory role?/ what supervisory support do you have?
- 20) How do you ensure you are appropriately managing legal aid grants?
- 21) How do you manage proceeds of proceedings?
- 22) Do you have support to ensure you can take annual leave and have back up if required?
- 23) How do you ensure you have work life balance, and manage the impacts of being exposed to traumatic material?
- 24) Are you enjoying your work?

## Interview audit criteria

Use this section to score the provider’s answers to the entry interview questions. See the audit report template for the audit ratings and the rating scale.

### A) Effective communication

Interview question guide	Audit criteria	Rating, VG, A,P,
1) How do you ensure that you communicate effectively with your clients?	The provider: a) uses plain language in oral and written communication – simple words, no jargon, explains legal terms, b) tests that the client has understood what the lawyer said by asking the client to repeat what they have said in their own words – check that the client is not agreeing or disengaging because they don’t understand.	
2) How do you ensure your client understands the options available to them to resolve family court disputes?	The provider explains what processes are available within the Family Court for resolution of disputes, mediation, types of hearings in a way the client can understand.	
3) How do you ensure your clients understand and comply with any protection order or parenting order?	The provider explains protection order or parenting order to the client and what they must do to comply with the conditions.	
4) How do you keep your client informed about progress with their case?	The provider: a) arranges to meet the client before the first court appearance b) fosters a culture of keeping clients ‘in the loop’, listening to what they say, and clearly noting, and acting on their legitimate instructions and concerns c) writes to the client to confirm advice given, progress made and next steps.	
5) How do identify when a client may need an interpreter?	The provider: a) asks the client about their language ability and if they need an interpreter; explains what an interpreter is and how they can help b) asks the client to repeat back what the provider has told them about interpreters to test their understanding and language ability.	
6) Are you familiar with communication assistance and how to engage this service for family court cases?	The provider: a) asks the client, and (with the client’s consent,) their whānau, or social worker about their educational history and achievement or previous assessment or diagnosis of neurodiversity, disability or mental health condition b) is aware of flags that may indicate a client may require communication assistance c) where relevant, completes the communication assistance application form and submits it to the court for consideration.	
7) How do you establish the if the client experiences any	The provider: a) asks the client, their whānau, or social worker (with the client’s consent) about any relevant medical or experience of mental distress.	

issues with mental health?	b) determines whether any mental health or intellectual disability issues potentially affect: <ul style="list-style-type: none"> <li>vii. the client's ability to participate</li> <li>viii. considers whether the client needs to be assessed by a mental health professional and, if so, what kind.</li> </ul>	
8) How would you establish if the client has any addiction, alcohol or drug issues and, if so, when and how are they to be addressed?	The provider establishes whether the addiction, alcohol or drug issues: <ul style="list-style-type: none"> <li>a) affects the safety of any children involved in the matter</li> <li>b) considers whether the client needs to be assessed by a professional and, if so, what kind.</li> </ul>	

## B) Managing cases

Interview question guide	Audit criteria	Rating VG, A, P
9) How do you work with parents to facilitate agreement about their children?	The provider <ul style="list-style-type: none"> <li>a) encourages the client to cooperate with the other party and reach their own decisions in matters affecting their children.</li> <li>b) subject to any safety issues, including family violence issues) advises the client of the benefits of making arrangements for children in co-operation with the other party rather than through a court hearing</li> <li>c) advises clients of alternatives to parenting orders and other ways that parenting arrangements can be agreed and recorded.</li> </ul>	
10) What techniques do you use to avoid inflaming the dispute between parties?	The provider is able to recognise and avoid triggers for inflaming disputes between parties and has a range of methods for managing and resolving conflict.	
11) What factors do you consider when advising clients to make a without notice application?	The provider: <ul style="list-style-type: none"> <li>a) ensures the circumstances justify a without notice application</li> <li>b) ensures all relevant information is provided to the Court even if it is not advantageous to their client.</li> <li>c) ensures that the client is aware the order will be served on the respondent.</li> </ul>	
12) How do you ensure that a client has made a full disclosure of all facts relevant to the application?	The provider: <ul style="list-style-type: none"> <li>a) uses a robust process to draw all relevant information from the client</li> <li>b) advises the client of the possible consequences of failing to disclose a relevant circumstance.</li> </ul>	
13) How would you determine if the client is affected by family or sexual violence dynamics?	The provider: <ul style="list-style-type: none"> <li>a) has a working knowledge of family violence and sexual violence dynamics and what action to take if they suspect their client is affected by family violence and sexual violence</li> <li>b) has a comprehensive knowledge of the family violence programmes available for clients and can recommend suitable programmes for their clients.</li> </ul>	

	c) ensures protection orders and parenting orders for the client or other party are appropriate if family or sexual violence is currently affecting the client.	
14) What steps do you take to ensure the client's safety in family violence matters?	The provider: a) ensures the client's address is not disclosed (if unknown to respondent) b) uses protection orders when necessary c) ensures supervised contact with children as relevant.	

### C) Financial management, supervision and complaints

Interview question guide	Audit criteria	Rating VG, A, P
32) How do you manage client complaints or concerns?	The provider listens if the client has a complaint or concern and responds to their feedback or questions.	
33) How do you undertake your supervisory role?/ what supervisory support do you have?	The provider: a) reviews the files if supervising another lawyer b) is available and approachable to give/ receive advice c) ensures training for supervised lawyer is available.	
34) How do you ensure you are appropriately managing legal aid grants?	The provider: a) has a working knowledge of the legal aid financial management and appropriate processes for claiming fees correctly b) uses an appropriate cost management tracking system.	
35) How do you manage proceeds of proceedings?	The provider: a) ensures that any proceeds of proceedings are received by the lawyer or their firm, and any money is paid into the lawyer/firm's trust account. b) taken all reasonable steps to protect the Commissioner's interest in the proceeds of proceedings?	

## File review criteria

### A) Effective communication

File review audit criteria	1	2	3	4	5
15) The provider has notes of regular contact with the client that keeps them updated with progress and shows a culture of keeping clients "in the loop".					
16) The language used in written communication with the client is appropriate for the client's capacity, avoids jargon and complex information is clearly presented.					
17) The provider's written communication with the client is specific to the client's case and includes specific advice (not impersonalised letters).					
18) Client communication outlines the provider's responsibilities to their client including how they will communicate, financial arrangements, confidentiality, management of personal information, documents and records, conflicts of interest, duty of care, and how to make a complaint.					

19) The provider has given the client copies of all applications, affidavits and reports filed, and the judgement (subject to the court's approval as required, for example section 132 and 133 reports under the Care of Children Act 2004).					
20) The provider has responded to the client's calls or emails in a timely way or explained to them if they need more time.					
21) If the client fails to respond, the provider has made an effort to explain the consequences and get around the lack of co-operation.					
22) The provider engaged a suitably qualified interpreter to assist with communication when required.					
23) The provider notes on file if the client has any particular communication problems (for example with language or literacy).					
24) The provider has used communication methods suitable for the client.					
25) The provider documents information relating to the client's substance use disorder and action taken in response.					
26) The provider has documented practical steps taken to ensure the client's safety from family violence such as making a referral to an appropriate family violence support agency, filed for a protection order as appropriate, protected relevant private information such as the client's address.					
27) The provider has asked the client about their financial circumstances and has documented their responses.					

**B) Managing cases**

File review audit criteria	1	2	3	4	5
36) The provider has clear notes of all interviews and advice given, confirmation of instructions.					
37) The provider uses templates and letters for progress reports, reviewing instructions and confirming new developments					
38) Instructions have been reviewed as the case develops.					
39) The provider has given advice that includes a clear explanation of the options open to the client.					
40) The provider has given correct advice that is specific to the case.					
41) The file includes a copy of all court documents filed, served, or issue on file.					
42) Overall, was the work done effective in achieving the client's reasonable objectives?					
43) Did the provider do everything reasonable to assist the client?					
44) Where issues are contested, were the outcomes achieved better than expected, as expected, or worse than expected?					
45) In your view, was there any risk that the client was prejudiced in any way by the work done or not done?					
46) Where relevant, the provider has documented practical steps taken to ensure the client's safety from family violence such as making a referral to an appropriate family violence support agency, filed for a protection order as appropriate, protected relevant private information such as the client's address.					

## D) Financial management, supervision and complaints

File review audit criteria	1	2	3	4	5
47) The provider has an appropriate written complaints management policy and process.					
48) The provider has followed their complaints policy when responding to complaints.					
49) The provider gives clear feedback and advice to lawyers they are supervising					
50) The provider reviews files under their supervision at appropriate times.					
51) The provider seeks an amendment to grant for additional work (whether fixed fee or not).					
52) Any amendment to grant sought is reasonable.					
53) Any other provider or other resource that worked on the case has been paid in a timely manner.					
54) The provider uses a cost management tracking system appropriately.					
55) Any disbursements incurred is appropriate and verifiable against the time records.					

## Provider behaviour and advocacy at court

Use this section if you are interviewing members of the judiciary or other stakeholders.

Interview question guide – judiciary and other stakeholders	Audit criteria	Rating VG, A, P, N/A
56) Does the provider interact with others in a professional manner?	The provider: a) is familiar with the case and prepared for any hearing b) conduct themselves in a courteous and professional manner c) conducts themselves in a way that respects the parties involved d) remains composed when confronted with a question or unforeseen circumstance.	
57) Does the provider work with others in a way that does not inflame the dispute between parties?	The provider does not inflame the dispute between the parties.	
58) Did they advocate appropriately for protection orders?	The provider considers the appropriateness of protection orders, and make any application in a timely fashion.	
59) Did they address all evidential issues in dispute?	The provider considers the appropriateness of any evidence and challenges its admissibility if necessary.	
60) Overall, how effective was the work done in achieving the client's reasonable objectives?		

61) Did the provider do everything reasonable to assist the client?		
62) Where issues were contested, were the outcomes achieved: (a) better than expected, (b) as expected, (c) worse than expected?		
63) In your view, was there any risk that the client was prejudiced in any way by the work done or not done?		

## In court/ client meeting observation

Use this section if you are observing the provider in court or during a meeting with a client.

Interview question guide – judiciary and other stakeholders	Audit criteria	Rating VG, A, P
64) Does the provider interact with others in a professional manner?	The provider: a) is familiar with the case and prepared for any hearing b) conducts themselves in a courteous and professional manner c) conducts themselves in a way that respects the parties involved d) remains composed when confronted with a question or unforeseen circumstance.	
65) Does the provider work with others in a way that does not inflame the dispute between parties?	The provider does not inflame the dispute between the parties.	
66) Did they advocate appropriately for protection orders?	The provider considers the appropriateness of protection orders make any application in a timely fashion.	
67) Did they identify a logically developed argument?	Negotiation strategies are appropriate given the facts of the case	
68) Does the provider use plain language in court?	The provider’s communication in court is free from jargon and overly complex phrasing, especially when questioning witnesses.	
69) Overall, how effective was the work done in achieving the client’s reasonable objectives?		
70) Did the provider do everything reasonable to assist the client?		
71) Where issues were contested, were the		

outcomes achieved: (a) better than expected, (b) as expected, (c) worse than expected?		
72) In your view, was there any risk that the client was prejudiced in any way by the work done or not done?		

## Relevant practice standards and contract provisions

### Effective communication

PS 2.7 Communicate with the client in a way that is clear, appropriate and tailored to the client's circumstances and keeps the client informed about the progress of their case, the procedure and substantive issues.

PS 4.1 When communicating with the client, endeavour to use language that is understandable, free from unnecessary jargon and appropriate to the age, gender and capacity of the client.

PS 10.5 When dealing with litigants in person, endeavour to communicate using language that is understandable, free of unnecessary jargon and appropriate to the age, gender and capacity of the person.

PS 10.3 Answer or respond to telephone inquiries promptly.

PS 10.4 Provide a timely and meaningful reply to correspondence, reply promptly to all urgent matters and advise clients that a detailed response for advice might require more time.

PS 4.4 Advise the client of the steps that he or she can or ought to take in order to assist the efficient and effective conduct of the matter.

PS 17.2 Subject to the client's instructions provide the client with copies of all applications, affidavits and reports filed in the proceedings (subject to any court restrictions as to release of documents). When the matter is concluded the client must be provided with a sealed copy of any order or agreement, and a copy of any judgment. The client must be advised about the basis for any appeal, the chances of success of the appeal, and time limits for review or appeal.

PS 17.3 Explain to the client what processes are available within the Family Court for resolution of disputes, counselling, mediation, and types of hearings, and, once a matter is in the Family Court system, provide an appropriate explanation of the applicable process in a way the client can understand.

PS 17.4 Keep the client informed of the progress of their matter in a timely manner and ensure that the client is aware of the stages through which a matter progresses in the court system, and of opportunities that each stage may provide to resolve matters.

### Relevant practice standards and contract provisions

PS 4.2 If appropriate, seek the use of a qualified interpreter (or communication assistance) If legal aid funding is required for this, apply for and obtain that funding in a timely manner in advance.

PS 13.12 Consider whether the client may present with any issues that raise the following questions in relation to the client:

- 13.12.1 Does the client have any intellectual disability or mental health issues and, if so, when and how are they to be addressed?
- 13.12.2 Does the client have any addiction, alcohol or drug issues and, if so, when and how are they to be addressed?
- 13.12.3 Is the matter suitable for restorative justice?
- 13.12.4 Is family violence involved?
- 13.12.5 Is the matter suitable for diversion?

PS 16.1 Recognise that family violence is a serious problem. The safety of children and parents is to be considered at all stages of a family law dispute.

### Relevant practice standards and contract provisions

PS 4.3 Give timely, appropriate and sufficiently detailed advice and explanations to the client to enable him or her to make an informed decision about the matter.

PS 4.5 Advise the client of relevant aspects of the matter, including the material evidence, risks, costs, liability and merits of settlement.

PS 4.6 At appropriate times, reassess and again advise the client of the relevant aspects of the matter.

PS 5.4 Record the client's factual instructions in a signed brief of evidence unless there is a good reason not to, for example where a client is not a witness or has already given a full account such as in a Police interview or where the evidence will be in an affidavit.

PS 2.8 Maintain a record of important advice given and a record of key instructions.

PS 11.1 Files are kept in such a way that if anyone, other than the lawyer conducting the matter, assumes management of the file it is possible for that person promptly to ascertain relevant matters

PS 4.8 Where appropriate and practical, advice should be provided to the client in writing, subject to client instructions to the contrary.

PS 16.2 Recognise the principles set out in the Care of Children Act 2004, and, in particular, that the welfare and best interests of the child, in his or her circumstances, are the paramount consideration.

PS 16.3 Recognise the need for parents to consult and cooperate with each other, and to reach their own decisions in matters affecting their children.

PS 16.4 Be aware of their obligation under the Family Proceedings Act 1980 to promote reconciliation, or where this is not possible, conciliation in all family law matters

PS 16.5 Encourage the client to take a conciliatory rather than a litigious approach to family disputes where appropriate. This will be in most cases, other than those affecting the safety of the client and/or their children, and/or where statutory provisions set out a mandatory approach. Parties should be encouraged to find their own solutions, because this has a positive impact on the parties and any children involved.

PS 16.6 Be aware of the special need in family law matters for them to conduct themselves in a way that does not inflame the dispute between the parties. They should endeavour to avoid conducting themselves in a manner that will increase distrust or animosity between the parties, and ensure that their own personal emotions or opinions do not influence the advice given to a client.

PS 17.2 Subject to the client's instructions provide the client with copies of all applications, affidavits and reports filed in the proceedings (subject to any court restrictions as to release of documents). When the matter is concluded the client must be provided with a sealed copy of any order or agreement, and a copy of any judgment. The client must be advised about the basis for any appeal, the chances of success of the appeal, and time limits for review or appeal.

PS 17.3 Explain to the client what processes are available within the Family Court for resolution of disputes, counselling, mediation, and types of hearings, and, once a matter is in the Family Court system, provide an appropriate explanation of the applicable process in a way the client can understand.

PS 19.1 Where the matter involves the guardianship of, or the provision of day-to-day care for, or contact with, children, advise the client (subject to any safety issues, including family violence issues) of the benefits of making arrangements for children in co-operation with the other party rather than through a court hearing.

PS 19.10 Subject to the client's instructions, where appropriate and practicable, ensure that written copies of advice are provided to the client and placed on the client's file.

PS 20.1 Advise the client of the requirement for the child's welfare and interests to be the paramount consideration, and the principles in the Act that are relevant to the client's matter.

PS 21.6 When acting for an applicant, advise the client of any known programmes available for themselves and their children.

### Practice standards and contract provisions

PS 2.11 Supervise adequately and have a plan for the review and supervision of any person undertaking legal aid work under their supervision.

CONTRACT Delegation of work

4.1. The Provider may only delegate work on an Accepted Assignment as authorised by, and in accordance with, the Delegation of Work policy in the Grants Manual.

4.2. Subject to any contrary or additional provisions in the Delegation of Work policy, if the Provider delegates work, the Provider:

4.2.1. retains overall responsibility for the Assignment (unless and until it is reassigned) and any services supplied in respect of it

4.2.2. is responsible for appropriate supervision of any Supervised Provider that the Provider delegates work to

4.2.3. must seek prior approval from the Commissioner before delegating work to another Lead Provider, unless prior approval is not required under the policy

4.2.4. must ensure that any provider they delegate work to has the appropriate Approval/s to undertake such work and complies with any Condition/s of their Approval/s. This applies whether the delegated provider is to be paid or unpaid, and

4.2.5. must ensure that any work delegated to a non-lawyer is of a kind permitted by the policy, and must provide appropriate supervision.

CON 3.6 In accordance with section 105 of the Act, the Provider must not take any payments relating to Legal Aid Services or Specified Legal Services unless those payments are authorised by or under the Act, or are authorised by the Commissioner acting under the Act or any regulations made under the Act.

CON 3.12.6 receipts and records of disbursements 3.12.7. records of all time spent on the Assignment by the Provider and any other providers or non-lawyers, and 3.12.8. records of any Proceeds of Proceedings.

CON: 9 Service delivery systems (1) The applicant must have service delivery systems that support the applicant to provide and account for legal aid services or specified legal services in an effective, efficient, and ethical manner.

CON 3.12.3. the Provider must endeavour to maintain a coherent file that includes 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.

CON 3.12.7. records of all time spent on the Assignment by the Provider and any other providers or non-lawyers.

#### **Relevant practice standards**

PS 10.1 In dealing with Judges, other lawyers, litigants in person, experts, court staff and the Ministry of Justice, conduct him or herself in a courteous and professional manner in order to encourage and not impede good working relationships.

PS 2.9 Conduct themselves in a way that respects the parties involved and does not inflame the dispute between the parties. Lawyers should avoid conducting proceedings in a manner that will increase distrust, hostility or animosity between the parties without achieving any significant and legitimate benefit for the client.

